1357.

SUPREME COURT OF THE UNITED STATES.

No. 150.

SAMUEL DAVIS, PLAINTIFF IN ERROR,

vs.

THE POLICE JURY OF THE PARISH OF CONCORDIA.

INDEX.

	Original	Print.
Petition	1	4
Spanish grant (annexed to petition)	4	6
Affidavit (annexed to petition)	6	7
Order of injunction	6	7
Injunction bond	6	7
Writ of injunction	7	8
Citation	8	8
Extract from the minutes, (judgment by default)	9	9
Answer	9	9
Order—setting aside default	11	10
" setting cause for trial	11	10
Jury empannelled	12	10
Note of evidence	12	11
Deposition of Peter M. Lapice	12 & 13	11
Testimony of D. Lattimore	13 & 16	11
" Peter Little	16, 17 & 14	12
" Jas. Elam	15	13
" Thos. Alexander	15	13
" Allen Wheelock	16	13
" McWhorter	17	14
" Judge Tenney	17	14
Translation of petition and grant, &c.,	marked "B B." 18	15
Sale from Thompson to Vidal	"C." 20	16
Translation of do.	"C C." 23	17
Confirmation to Jos. Vidal	"D." 24	18
Sale from Vidal to Davis	"E." 25	19
Ordinance of the Police Jury	"F." 29	21
Advertisement of Ferry	"G." 30	22
Sections 8, 9, and 10 of ordinance	"H." 31	23
Bills of exception, (pl'ffs)	33	23
Extracts from the minutes	34	24
Verdict of the jury	35	24
Bill of exceptions, (defendants) &c.	35	25

J. & G. S. Gideon, printers.

INDEX.

		Original.	Print.
Extracts from the minutes—judgment, &c.		39	27
Motion for new trial		39	27
" " overruled		40	27
Judgment		40	27
Petition of appeal		41	28
Order of appeal		42	28
Appeal bond		42	28
Document referred to in plaintiff's bill of exceptions	"J."	43	29
Document referred to in plaintiff's bill of exceptions	"I."	44	30
Document referred to in plaintiff's bill of exceptions	"K."	45	30
Document referred to in plaintiff's bill of exceptions	"L."	46	31
Citation of appeal		47	31
Clerk's certificate to record		48	32
Record filed in the supreme court		49	32
Extracts from the minutes of the supreme court		50	33
Opinion and judgment		51	33
(*Second appeal.*)			
Extracts from the minutes and agreement of counsel		57	37
Cause set for trial		68	37
Waiver of jury		58	37
Note of evidence		58	37
All the evidence taken on first trial		12	37
Deposition of G. W. Lovelace	"A A A."		
Interrogatories		65	42
Commission		68	43
Deposition		69	44
Deposition of John Perkins	"B B B."		
Interrogatories		71	45
Commission		74	47
Deposition		75	47
Deposition of Gen'l Joseph Walker	"C C C."		
Interrogatories		78	49
Commission		80	51
Deposition		81	51
Deposition of Polycarp Lamothe	"D D D."		
Interrogatories		84	53
Commission		86	54
Deposition		87	55
Deposition of Francis Henderson	"D D D."		
Interrogatories		84	53
Commission		86	54
Deposition		89	56
Deposition of D. B. Morgan	"E E E."		
Interrogatories		92	57
Commission		95	59
Deposition		96	60
Deposition of L. Bouligney	"F F F."		
Interrogatories		99	62
Commission		101	63
Deposition		102	63

	Original.	Print.
Deposition of Richard Relf - - - - "G G G."		
Interrogatories - - - - - -	104	65
Commission - - - - - -	106	66
Deposition - - - - - -	107	66
Deposition of J. McDonaugh - - - - "H H H."		
Interrogatories - - - - - -	109	67
Commission - - - - - -	110	68
Deposition - - - - - -	111	69
Deposition of D. W. Coxe - - - - "I I I."		
Interrogatories - - - - - -	113	70
Commission - - - - - -	115	71
Deposition - - - - - -	116	72
Depositions of C. Miller and P. Little - - - "K K K."		
Interrogatories - - - - - -	118	73
Commission - - - - - -	122	75
Deposition - - - - - -	123	75
Document marked - - - - - "L L L."	127	78
License " - - - - - "M M M."	128	79
Bond " - - - - - "N N N."	129	79
Bond " - - - - - "O O O."	130	80
Ordinance of Police Jury - - - - - -	132	82
Testimony of Peter Little - - - - - -	59	38
" Daniel Vestner - - - - - -	59	38
" A. C. Hunter - - - - - -	60	39
" Dr. Lattimore - - - - - -	60	39
" Thomas Alexander - - - - - -	62	40
" W. M. Shaw - - - - - -	63	41
" W. B. Seprons - - - - - -	64	41
" Ed. Sparrow - - - - - -	64	41
Extracts from the minutes, (jury waived, &c.) - - -	134	83
Extracts from the minutes, (agreement of counsel, &c.) - -	135	83
Judgment - - - - - - - - -	135	83
Petition of appeal - - - - - - - -	146	90
Order of appeal - - - - - - - -	146	90
Appeal bond - - - - - - - - -	147	91
Citation of appeal - - - - - - - -	148	91
Clerk's certificate - - - - - - - -	149	92
Record filed in the supreme court - - - - - -	150	92
Proceedings in the supreme court.—(Second appeal.)		
Extracts from the minutes - - - - - - -	151	93
Extracts from the minutes - - - - - - -	152	93
Opinion and judgment of the supreme court - - - -	153	94
Writ of error, (original annexed) - - - - -	159	97
Bond for writ of error - - - - - - -	160	98
Citation in error - - - - - - - -	161	99
Certificate - - - - - - - - -	163	99
Writ of error - - - - - - - - -	164	100
Citation - - - - - - - - -	166	100
Service of citation - - - - - - - -	169	101

Record of appeal.

STATE OF LOUISIANA, *Parish of Concordia:*

Pleas before the ninth district court of the State of Louisiana, in and for the parish of Concordia.

Be it remembered, that on the seventh day of February, anno domini one thousand eight hundred and forty, Samuel Davis, by his attorneys, R. N. & A. N. Ogden, esqs., filed in said court his petition, in the words and figures following, to wit:

Petition.

To the honorable Frederick H. Davis, district judge of the ninth judicial district of the State of Louisiana, in and for the parish of Concordia.

The petition of Samuel Davis, a resident of the State of Mississippi, with respect represents, that on the 19th of February, 1801, the Marquis de Casa Calva, then governor general of the province of Louisiana by appointment of the King of Spain, granted to one Thos. Thompson, then of the said parish, the privilege of the ferry at the post of Concordia in said parish, opposite to the then town, now city, of Natchez, as a privilege to be attached to the plantation of said Thompson, when he then possessed, in order that from that place he might have and enjoy the exclusive privilege of having a boat for passage across the Mississippi river, for carriage of horses, men, &c., for reasonable and customary toll, as it might be established, and on condition that he, the said Thompson, would clear a certain public road or highway from the said post of Concordia to the Bayou Cocodille, in said parish; all of which will more fully appear by the original petition and grant aforesaid, hereto annexed as part of this petition. Your petitioner further represents, that the said Thompson did fully perform the conditions aforesaid, as appears by the certificate of Joseph Vidal, the commandant at said post of Concordia. Your petitioner further represents, that immediately thereafter the said Thompson entered upon the privilege aforesaid, and performed the duties and enjoyed the profits of said ferry, until the 16th of October, 1803, at which time the said Thompson assigned all his right and interest in and to said ferry and said tract of land to Joseph Vidal, and delivered the same accordingly, as will appear by the assignment written on the grant already referred to, and made a part of the petition. And your petitioner shews, that the said tract of land to which the said privilege was attached was sold by the said Thompson to the said Vidal for the sum of four thousand dollars, when the said tract of land without the ferry would not at that time have been worth more than eight hundred dollars, as will appear by the copy of sale annexed. Your petitioner further represents, that the said Vidal

entered into possession of said ferry and plantation the day and year last aforesaid, and continued to keep and enjoy the same from that time until about the day of 1817, when he sold and delivered the said tract of land and ferry to your petitioner, and a copy of the sale is hereto annexed. Your petitioner therefore shews, that he is the legal owner of the said tract of land, and the lawful proprietor of the exclusive privilege of keeping said ferry; and that, by the laws, usages, and customs of the Spanish Government at the time said grant was made, said privilege operates to the exclusion of any other ferry for the distance of one league above and one league below the same; and that your petitioner's title thereto has been acquired by the grant aforesaid from the Spanish Government, and that he has also a prescriptive right thereto, based on the possession and enjoyment thereof by himself and his vendors since the year 1801.

Your petitioners further shew, that "the Police Jury of the parish of Concordia, on the 4th day of April, 1839, passed an ordinance authorizing the treasurer of the parish, and making it his duty, to sell from time to time, after ten days public notice, either at private sale or at public auction, the exclusive privilege of keeping a ferry across the Mississippi river, from a point in said parish opposite to the city of Natchez, for a term of not less than one year nor more than three years; that George W. Keeton, the parish treasurer of said parish, in pursuance of said ordinance, has advertised the said ferry for sale, by a notice dated the 29th of January last, and will, on the 10th day of February, according to said notice, proceed to sell the same, unless arrested by an injunction from the honorable court. Your petitioner shews, that said ordinance is illegal, and injurious to the rights of your petitioner, who has an exclusive privilege, as aforesaid, to the said ferry, the value of which exceeds the sum of three hundred dollars, and that, if the said ordinance should be executed, as is threatened, your petitioner will suffer damages to a large amount, and more than three hundred dollars. Wherefore, your petitioner prays, that the Police Jury of the parish of Concordia" may be duly cited to answer this petition; that, by judgment of this honorable court, the said ordinance may be declared illegal and null and void, and that the Police Jury of the parish of Concordia be enjoined from proceeding to the execution of said ordinance, or in any manner interfering with your petitioner's rights to the exclusive privilege of said ferry, or disturbing him in the possession and enjoyment of the same; and that George W. Keeton, the treasurer of the said parish, be enjoined from selling, either at public or private sale, according to his advertisement, the said ferry, until the further order of this court, and that his injunction be rendered perpetual, and said defendants be condemned to pay the costs. And your petitioner prays for general relief in the premises.

R. N. & A. N. OGDEN,
Attys. for Petitioner.

Grant from the Marquis de Casa Calva, annexed to and made part of petition marked "B."

S'or Gob'or Gen'l:

La propuesta que have el suplicante es equal a la que vs. á D. Juan Heverard. El certo numero de hevitantes que hay en esta puesto no permito que se empleceo en un trabaso tan cortose, sin que se les satisfago, como lo expongo a va. en officio de ceta fecha, avi aterdidas las ventafas que remb taran veconivend a vs. la solicitud del suplicant, quien es sueto espar de cumplir lo que propone siempre que fuere del agrado de vs. concederte el privilego que solicita.

Concordia, 31 de Enero, de 1801.

JH. VIDAL.

Senor Commandant des p'to de Concordia:

Thomas Thompson, con el debido respeto a V. m'des, que no estando establecido aqui hasta ahora masque cinco habitantes, no podemos hasen los gastos de un camino sin que el Rey nos pagarse "nostro eravajo porto qual habiendo el s'or governador concedido a Dn. Juan Heverard, la traversa del rio Negro por hacer el camino à sa costa desde el dicho rio hasta el bayo Cocodrillo, el suplicante propone due desto este puesto h'ta el bayo Cocodrillo hara tambien el camino de trienta piès à quarenta de ambo à sus expensas, contat que se le conseda toner le transversa desde la havitation del suplicante hasta el desembarcadero de Natchez como un privilegio anexo à sa havitation para la qual promete tomer chabanes à proposito y demas embarcaciones par el efecto oracio que espera reciver de V. m. Concordia, 27 de Enero, 1801.

THOMAS THOMPSON.

Nueva Orleans, 19 *de Febrero, de* 1801.

Conformandose Thomas Thompson a tracer el camino que propone á sus expensas baxo la inspecions del comandante, del puesta de Concordia, se le consede el privilego annexo á la habitation que posée para que de ella, con exclusion haga los traviesos del rio Cobando solamente, los precios as equitatinos a los transeuntes, que se fixavan con acuerdo del dicho commandante.

EL MARQ. de CASA CALVO.

Concordia, 16 *de Febrero, de* 1802.

En vertud que Thomas Thompson ha complide con las condiciones que ofricio en este en memorial, y que executo basso mi ynspecion segun lo dispuento pr. el sr. gub'r general, en *en* anterior decreto se le entrega el presentes para que haga constar y posea el derecho exclusio q'l tiene de la fraisard decide este puesto el desembarcadero de Natchez.

Concordia 16 de Febrero, de 1802. J'H VIDAL.

I do hereby transfer to Capt. J. Vidal, commandant of the post of Concordia, all my right, title, claim, and interest, to the privilege herein granted to me for keeping a ferry, having sold to him my plantation to which the said ferry is annexed. Concordia, October 16, 1803.

THOMAS THOMPSON.

Before me, STEP'N MINOR.

Recorded in book B, pages 90, 91, this day of August, A. D. one thousand eight hundred and eleven.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of the parish of Concordia.

D. LATTEMORE,
Judge of the parish of Concordia.

Affidavit annexed to Petition.

The petitioner, Samuel Davis, being duly sworn, declares and says, that the facts set forth in the foregoing petition are correct and true.

SAMUEL DAVIS.

Subscribed and sworn to in open court, this 7th day of February, A. D. 1840.

W. T. PROUD, *Clerk of ninth district court, parish of Concordia.*

Order for Injunction.

Let an injunction issue as prayed for in the within petition, on petitioners giving bond and security according to law, in the sum of one thousand dollars. February 7th, 1840.

FRED. H. DAVIS, *Judge ninth district.*

Injunction Bond.

STATE OF LOUISIANA, *parish of Concordia, ss:*

Be it known that we, Samuel Davis, as principal, and William T. Proud, as security, are held and firmly bound unto the Police Jury of the parish of Concordia, in the sum of one thousand dollars; for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs and executors, by these presents, dated this seventh day of February, 1840.

The condition of the above obligation is such, that whereas the said Samuel Davis has this day obtained from the honorable the district court of the parish of Concordia an order of injunction directed against the Police Jury of the parish of Concordia, and against George W. Keeton, parish treasurer of said parish, enjoining them from selling the ferry across the river Mississippi, from a point opposite the city of Natchez, or disturbing the said Davis in the right which he claims to the exclusive privilege of said ferry. Now, therefore, if the said Davis shall maintain his said injunction, or shall pay and satisfy all such damages as the said Police Jury shall sustain, in case the said injunction should

not be maintained; then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

Witness our hands, this 7th February, 1840.

SAMUEL DAVIS,
W. T. PROUD.
W. T. PROUD, *Clerk*.

Filed Feb'y 7, 1840.

W. T. PROUD.

Writ of Injunction.

PARISH OF CONCORDIA, *Ninth district court:*

The State of Louisiana and said court, to George W. Keeton, parish treasurer, and Jesse Guice, president of the Police Jury of the said parish of Concordia:

Know ye, that Samuel Davis, now of the city of Natchez and State of Mississippi, has this day prayed for and obtained from the court an order of injunction to restrain and prohibit you, or either of you, from selling the ferry across the river Mississippi, from a point opposite the city of Natchez, or disturbing the said Davis in the right which he claims to the exclusive privilege of said ferry. Now, therefore, you are hereby commanded and enjoined to abstain from selling, or in anywise disturbing the said Davis in the right which he claims as aforesaid, until a hearing and adjudication of the legal and equitable privileges of all parties concerned shall take place.

Witness the honorable Frederick H. Davis, judge of the ninth judicial district of the State of Louisiana, and presiding judge of this court, this 7th day of February, A. D. 1840.

[SEAL.]

W. T. PROUD, *Clerk of said court*.

Sheriff's Return.

Received 7th February, 1840. Served the same day a certified copy of this writ on George W. Keeton, parish treasurer, in person, in this parish. Parish of Concordia, Louisiana.

EDW'D SPARROW, *Sheriff*.

Filed February 8, 1840.

W. T. PROUD, *Clerk*.

Citation.

The State of Louisiana, ninth district court, parish of Concordia.

SAMUEL DAVIS,
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

To Jesse Guice, president of the Police Jury of the parish of Concordia, residing in said parish of Concordia.

You are hereby summoned, cited, either to comply with the demand contained in the petition of the said Samuel Davis, of which a copy

accompanies this citation, or to deliver your answer to the said petition in the office of the clerk of said court, held in the town of Vidalia, in said parish, within thirteen days after service thereof.

Witness the honorable Frederick H. Davis, judge of the said court.

[SEAL.] Signed, sealed, and delivered, this ninth day of March, 1840.

W. T. PROUD, *Clerk of said court*.

Sheriff's Return.

Received 9th March, 1840, and served on the 13th of April, 1840, by leaving a certified copy of this citation, and of the plaintiff's petition, with Jesse Guice, president of the Police Jury of the parish of Concordia, Louisiana, in person, at his domicil in this parish.

G. B. GIFFORD, *Deputy Sheriff of Concordia, Louisiana*.

Filed September 1, 1840.

W. T. PROUD, *Clerk*.

In court, December, 8, 1840.

SAMUEL DAVIS vs. THE POLICE JURY. } No. 536.

The defendants having failed to appear either in person or by their advocate, and the legal delay having expired, judgment by default is rendered against them.

Ninth district court, parish of Concordia.

Answer.

SAMUEL DAVIS vs. THE POLICE JURY. } No. 536.

The defendants appearing by their undersigned counsel, answer as follows to the petition against them filed in the above entitled suit:

They admit that the Police Jury of the parish of Concordia, as alleged in said petition, did by an ordinance, dated April 4, 1839, establish a public ferry from a point in said parish, opposite the city of Natchez, across the river Mississippi, to said city, and making it the duty of the treasurer of said parish to sell from time to time, either at public auction or at private sale, the exclusive privilege of keeping said ferry for a term not less than one, nor more than three years; and that George W. Keeton, the treasurer of said parish, in pursuance and by virtue of said ordinance, (then in full operation and effect,) was proceeding legally to sell, after due notice, said exclusive privilege at public auction to the highest bidder, which he was illegally restrained from doing by the injunction in this suit, illegally obtained by the said Samuel Davis. Defendants deny generally and specially each and every allegation (with the above exception,) in plaintiff's petition contained. They deny that any exclusive right or privilege of keeping a ferry across the river Mis-

sissippi, either from Vidalia, the point opposite Natchez, or within a distance of ten miles above or below, either temporarily or permanently, has ever been granted by competent authority to any individual.

If the alleged grant was ever made, (which is denied,) then they say it was inoperative and null for the foregoing reasons, and because its terms and conditions were never complied with by the grantee, because it never was exercised either by the said Davis, the grantee, or his assigns, and has become forfeited by non user. Defendants aver that the ordinance referred to in plaintiff's petition is legal and valid; that the police juries of the different parishes have delegated to them the authority to establish, and to rent at public auction, or at private sale, any number of ferries they judge proper; that said Police Jury have acted in the legitimate exercise of said authority, in renting out the ferry which the plaintiff herein complains of, and that said plaintiff has not, and could not have, any right to a ferry which was not subject to the authority and control of the public. Defendants aver that by the illegal and unauthorized interference with the just rights of the parish of Concordia, in suing out the injunction in this suit, the said parish has sustained damages in the sum of one thousand dollars.

Wherefore, the premises considered, your respondents pray that the injunction by the plaintiff obtained in this suit may be dissolved, and that the plaintiff be adjudged to pay to respondents, for the use of the parish of Concordia, the sum of one thousand dollars damages and the costs of suit to be taxed; that said plaintiff be perpetually enjoined from interfering with respondents' rights to establish ferries across any waters bordering upon or in said parish; that respondents have a trial by jury, and for general relief in the premises.

D. S. STACY, *Att'y for Deft's.*

Filed December 10, 1840.

W. T. PROUD, *Clerk.*

In court, December 10, 1840.

SAMUEL DAVIS vs. THE POLICE JURY. } No. 536.

Answer filed and judgment by default set aside.

In court, December 10, 1841.

SAMUEL DAVIS vs. THE POLICE JURY. } No. 536.

Set for Friday, 11th instant.

SAMUEL DAVIS vs. THE POLICE JURY. } No. 536.

This case being called up for trial, the following jurors were empannelled, and sworn to try the issue, viz:

Peter Little, foreman; George Hill, Stephen M. Ford, Edward Coch-

ran, Abner Wilson, Samuel Langly, Samuel W. Wickwire, Reuben G. Gibson, Scott Watson, John Goodrich, Charles Tullis, McCarty Brannin.

Evidence taken in court on the trial.

SAMUEL DAVIS
vs. } No. 536.
THE POLICE JURY.

Concordia district court, June term, 1841, June 12th.

Evidence taken in court.

Peter M. Lapice sworn on the part of the plaintiff, knows the handwriting of Joseph Vidal and Stephen Minor, and believes their signatures to the paper submitted to him, marked "B," to be their true and genuine signatures, and says they are both dead.

David Latimore sworn.—Does not know how long Thomas Thompson has been dead; witness came to this country in April, 1800. Thompson's brother came on witnesses plantation as overseer in 1808 or 1809, or before, and believes Thomas Thompson was then dead. Says Vidal was commandant here in February 1802, and until the Spanish authority ceased. Does not know whether Stephen Minor was a captain in the Spanish army or not, but he was considered in the country a Spanish officer. At the time of the surrender of this country by the Spanish authorities to the United States, he acted as the agent of the Spanish Government in the transfer.

Plaintiff's counsel then offered in evidence the original paper, marked "B," (page 4,) received in evidence.

Peter M. Lapice being sworn to translate the original petition of Thomas Thompson to the commandant of the post of Concordia, dated 27th January, 1801, and Joseph Vidal's recommendation, dated 31st January, 1801, to Governor Casa Calva, and Governor Casa Calva's grant, dated New Orleans, 19th February, 1801, and also Joseph Vidal's certificate, dated 16th February, 1802, as contained in said original paper marked "B," says that the paper marked "B B," purporting to be a translation of said original document, in paper marked "B," made by James Berthe, at Natchez, on the 31st August, 1821, is a correct and true translation; which paper "B B," is admitted in evidence and read. (Page 18.)

Peter M. Lapice proved the signature of Stephen or Estevan Minor to the copy of sale from Thomas Thompson to Joseph Vidal, dated 17th October, 1803, marked "C." (Page 20.)

Peter M. Lapice, sworn in chief on the part of the plaintiff, says, he has known this part of the parish, Joseph Vidal, and the plaintiff Samuel Davis, since the year 1817. Vidal and Davis have always claimed and held, and rented out the ferry between Vidalia and Natchez, and he never heard their ownership disputed until lately. Says the certificate of confirmation to Joseph Vidal, marked "D," is for the same tract of land to which the right of the ferry is attached.

Cross questioned. Witness says the Thompson tract is bounded be-

low by David Latimore's land, and above by the Vidalia tract of land; has never known Vidal or Davis to carry on the ferry from the Thompson tract; the ferry has generally been carried on from the front of the Vidalia tract. In 1817, '18, and '19, during the time of Mr. Davis' residence here, he resided on the Thompson tract with his family. Witness was in the habit of visiting him then very often, and went directly over to his residence, where he had a number of boats. Witness does not know whether these boats were for the use of the ferry or not; since 1819 or '20, the ferry has been kept about a quarter of a mile above the Thompson tract; has never known any other ferry kept at Vidalia but Mr. Davis's; Judge Perkins kept a ferry for a short time, about half or three quarters of a mile above the Thompson tract; the tract of land on which the ferry has been kept belonged to Vidal, and since and now to plaintiff, being immediately above and adjoining the Thompson tract; both tracts have been in their possession ever since witness has been in the country, 1817. Witness has never known the parish to lease the ferry, or to claim such right till now; the tract of land, the Thompson tract, is opposite the Natchez landing, where the ferry is kept on that side; the old ferry house was where it now is, and where the post of Concordia was on the Vidalia tract.

Plaintiff's counsel then offered in evidence certified copy of sale, in the Spanish language, from Thompson to Joseph Vidal, marked "C," and translation marked "C C," (page 23;) admitted, but excepted to by defendant's counsel.

Plaintiff's counsel then read from book of record "B," taken from the parish judge's office, what purports to be the registration of papers filed in this suit, marked "B" and "C," with leave to substitute in their places certified copies.

Plaintiff's counsel then offered in evidence confirmation to Joseph Vidal of the tract of land to which the right of ferry is attached, marked "D," (page 24;) admitted.

Also a certified copy of act of sale from J. Vidal to Samuel Davis, marked "E;" admitted by consent. (Page 25.)

Peter Little, sworn on part of plaintiff: Has resided in the city of Natchez and in this parish since the year 1798; witness knew Thomas Thompson; he kept the ferry from Vidalia to Natchez landing from 1801 to 1803, and perhaps longer; afterwards, Joseph Vidal had it and rented it out, as witness believes; the ferry was kept then where it now is; there was no ferry from the Thompson tract; never knew the parish to rent out the ferry; the landing on the Natchez side was about 150 yards lower when Thompson had the ferry than now; what is now called the town of Vidalia was formerly the post of Concordia, and the ferry was a little above the Government house; the Government house was between a quarter and half a mile above the upper line of the Thompson tract.

Cross questioned. In 1801 there were but few people living here, and perhaps five or six houses; the people were not wealthy; the distance from here to Bayou Cocodria is about eight miles; did not know that

Stephen Minor had any authority on this side, but he was commandant of the port of Natchez during the Spanish time.

Plaintiff's evidence her closed.

A. N. Ogden and James Elam, esq's, sworn on the part of defendants. Mr. Elam thinks the services of counsel for defending this suit worth 200 dollars.

Thomas Alexander, sworn for defendants, knows that the ferry from Vidalia to Natchez landing, has been kept where it now is since the year 1807; the ferry never was kept on the Thompson tract of land to witnesses knowledge; Judge Perkins kept a ferry at Bacon's landing, about the year 1819 or '20; a ferry was also kept about a mile above the court-house by witness and his brother, from the latter part of 1818 or '19, until the fall of 1830, when the property was sold; witness kept it in his own right; did not rent it from any one, but established it as his own land, and as a public ferry.

Cross questioned. A suit was brought by Davis against his brother shortly after they (he and his brother) established the ferry. The point where the ferry here is kept is on a tract immediately adjoining the Thompson tract; as witness believes, always in the possession of Vidal and Davis, and supposed to belong to them. On the suit against his brother, alluded to above, there was a judgment in this court against him, (David Alexander,) which was reversed in the Supreme Court in consequence of the omission or blunder of the clerk in not sending up all the papers in the case; on the return of the case to the district court it was dismissed by the plaintiff.

Allen Wheelock, sworn for defendant. Witness does not know what Mr. Davis gets for the ferry, but believes he rents it for 400 dollars per year.

David Lattimore examined by defendant's counsel. Witness came to this place in 1807 or '8; the ferry was always kept at the same place, first by Mr. Vidal, and afterwards by Mr. Davis; there never has been, to witnesses knowledge, any ferry kept on the Thomas Thompson tract; the distance from where the ferry is, is less than a quarter of a mile from the upper line of the Thompson tract; in low water, during the summer, the ferry is kept a quarter of a mile higher up the river, and for the greater part of the year, and believes it has so been kept for the last 15 or 20 years. The place where witness understands the ferry to be established is something less than a quarter of a mile above the Thomas Thompson tract; but the ferrymen land all along for a quarter of a mile above that point; all of which is on the land of Mr. Davis, or claimed and cultivated by him.

Peter Little examined by defendant's counsel. The ferry is kept for 9 or 10 months in the year at a point about a quarter of a mile above the old ferry house, half a mile above the Thompson tract, and is so kept at all times, when the banks of the river are not overflowed, and so kept for the convenience of a good landing, on land claimed by plaintiff, and over which he exercises ownership.

James Dunlap, parish judge, sworn on the part of defendants. Witness says (question suspended).

Cross questioned by plaintiff's counsel. Mrs. Davis has always had the ferry since witness has known it; does not know that the parish has ever rented it out.

George C. McWhorter, sworn for defendants, says: The ferry is kept at low water at the point of the woods 200 or 300 yards above the upper line of the Thompson tract; it is by matter of necessity that the ferry is removed down, as the upper point cannot always be reached by reason of the high water; the ferry is kept above nine months in the year; witness came here in September, 1836, during which time there has been but two overflows sufficiently high to prevent reaching the point at the woods before spoken of.

Defendants' counsel then offered in evidence an ordinance of the Police Jury, entitled "an ordinance to amend an ordinance, entitled an ordinance to establish public ferries," marked "F," admitted. (Page 29.)

Also advertisement of sale of the ferry, marked "G," admitted. (Page 30.)

Also sections 8, 9, and 10, of an ordinance of the Police Jury, passed 9 August, 1813, marked "H," admitted. Exceptions reserved. (Page 31.)

Peter Little, recalled by plaintiff's counsel, says: He thinks the ferry was temporarily kept at Mr. Brown's, below where it now is.

Judge Tenney, sworn on the part of plaintiff. Thinks he removed to this parish in the fall of 1824; frequently crossed the river before that time; Gacia kept the ferry when he first knew it, at a point short of a quarter of a mile above what has been described as the upper line of the Thompson tract. His successor was a Mr. Loder, who continued there, he thinks, until 1826; the ferry was kept at the same place; sometimes passengers got in above, but generally at the place before spoken of. In 1827 the ferry was kept by a Mr. Thacker, and at the same place; in 1828 by Mrs. Thacker, widow, and at the same place; sometimes above, but rarely; she was succeeded by Mrs. Semour, who, witness thinks, kept it two years, and at the same place, but sometimes landed opposite the court-house. She was succeeded, witness thinks, by Mr. Holliday; in 1832, '3, or '4, the ferryman landed above, which caused complaints to be made, as it was thought the landing below was not so bad as to require landing above; always understood they were all lessees of Mr. Davis; since that time witness has not known so much of the ferry as others.

Testimony here closed on both sides. Taken down in open court, 12 June, 1841.

W. T. PROUD, *Clerk*.

Filed 12 June, 1841.

W. T. PROUD, *Clerk*.

1564,

Translation of petition and grant of ferry to Thomas Thompson, "B. B."

His excellency the Governor:

The proposition made by the petitioner is similar to that you were pleased to grant to Don Juan Heverard. The small number of inhabitants residing in this post does not permit that they employ themselves in an undertaking so costly, unless they be compensated. As I have exposed to your excellency on this subject, considering the advantages which will result, I recommend to your excellency to grant the prayer of the petitioner, who is a person capable of fulfilling what he proposes, providing it may please your excellency to grant the privilege which he solicits.

(Signed) JH. VIDAL.

Concordia, 31st Jan., 1801.

Mr. Commandant of the post of Concordia:

Thomas Thompson, with due respect represents, and sayeth: That as there are no more than five inhabitants now established here, we cannot incur the expenses of a road, unless the ferry pays us our work; and whereas, his excellency, the Governor, has granted to Don Juan Heverard, the ferry of the Black river, for making a road at his expense from said river to the bayou *Cocodrilla*, the petitioner proposes that from this post to bayou Cocodrillo, he will likewise make the road of thirty or forty feet wide, at his expense, with the condition that he may be granted to hold the ferry from his plantation to the landing of Natchez, as a privilege attached to his plantation, to which effect he promises to keep flats and other necessary boats to the purpose. This favor he expects to receive from you.

(Signed)

THOS. THOMPSON.

Concordia, 27th Jan., 1801.

NEW ORLEANS, 19*th February*, 1801.

Thomas Thompson, conforming himself to make the road which he proposes at his expense, and under the inspection of the commandant of the post of Concordia, I grant him the privilege he prays for, to be attached to the plantation he possesses, in order that from that place, with exclusive privilege, he may carry on the ferry of the river, demanding and receiving only the prices most equitable and customary, which may be established by knowledge of the said commandant.

(Signed) THE MARQUIS DE CASA CALVA.

Whereas Thomas Thompson has complied with the conditions which he offered in his memorial, and that he has executed under my inspection what was prescribed to him by his excellency the Governor in his anterior decree, I deliver these unto him, that he may make them validate, and possess himself of the exclusive privilege granted to him of the ferry from this post to the landing of Natchez. Concordia, 16 February, 1802.

(Signed) JH. VIDAL.

I certify that the present translation from the original Spanish document is true and correct, to the best of my knowledge and abilities.

JAMES BERTHE.

NATCHEZ, 31*st August*, 1821.

Filed 12th June, 1841. W. T. PROUD, *Clerk*.

Act of sale from Thomas Thompson to Jos. Vidal, marked "C."

Sepan quantos esta carta vean como yo, Thomas Thompson, vecino del puesto de Concordia, otorgo que vendo realmente y con efecto, á Dn. José Vidal, comandante de este puesto, un pano de tierra, cituado en la orilla occidental del Mississippi, que contiene quatrocientos quarenta y ocho arpanes de tierra, siendo parage que ne havido concedido, segun consta del plano y titulo de la adquerida tierra, que entrego á Dn. José Vidal, al cuyo favor lo he endozado qual tierra confina con la, concedido á Dn. José Vidal, y Philipe Engel, y por el desto con el Lago de Concordia, y solavendo á hora libre de gravamen á ipotan en la suma de quatro mil pesos, dos mil y quinientos en plata efectiva, y lo restante en otros efectos *efectos*, todo la qual he recevido y medo y por entregado á mi entera satisfaccion y voluntad, y porende presente la entrega, renuncio la eviccion de la non-numerata pecunia dolo y demas dellaso. Mediante lo qual me aparto y separo del propriedad, posecion, util, dominio, y senorio, que adha tierra habia y feria y todo lo cedo y traspaso á favor del comprador ó quiencer causa ó derecho habrere, para que como suya propia la posea, venda, y enassene á su voluntad, en virtud de esta *esta* escritura que á su favor otorgo ensenal de real entrega por lo que haderen victo haver adquirido su posecion, sin que necesito de otra pruevar de que le relevo y me obligo á la eviccion, seguridad, y saniamento de esta ventura vastanto forma de derecho. Por lo quedo y permeso a las Tutinas de S. M. me apunisen á su cumplimiento con el rigor de sentencia consentita, y posada en autoridad de casa pisgada salve que renuncio todas las leges á mi favor conta general que lo prolune en cuyo testimonio es es jesha la conta en el puesto de Concordia á las tres dias del mes de Septiembre de mil ochocientos tres, y estando presente Dn. José Vidal, acepto á su favor esta escritura, y por ella recivo comprado el dicho pano de tierra en el precio y conformidad que me saven di da de lo que me doy per satisfecho á mi voluntad. Yo, Dn. Estevan Minor, capitan de los Rs. Ex'os hallandome, con licencia del Govierno superior en dicho puesto, y siendo necesario, authorizan esta venta, doy fee conosco á los ortorgantes, que lo firmaron con migo, Dn. Daniel Doglas, Dn. Fredericho Zervan, y Dn. Roberto Parqueson, testigos presentes. Thomas Thompson, Jose Vidal, Estevan Minor, Daniel Doglass, Fredericho Zerevan, Roberto Parqueson. Es copia de su original que queda en estas archivas de me lango Concordia, diez y siete de Octubre de mil ochocientos tres. ESTEVAN MINOR.

Sepan quantos esta carta vean como yo, Thomas Thompson, vecino del puesto de Concordia, otorgo que vendo realmente y con efecto, á Dn. José Vidal, comandante de este puesto, un pano de tierra, cituа-

do esta orilla cccidental del Mississippi, que contiene quatro cientos quarenta y ocho arpanes de tierra, ciendo el parage que me havido concedido, segun consta del plano y titulo de la adquerida tierra, que entrego á Dn. José Vidal y Philipe Engel, y pose el peste con el Lago de Concordia, y Lila vendo, á hora libre, lo gravamen eysotica en la suma de quatro mil pesos, dos mil y quinientos en plata efectiva, y lo restante en otros efectos, todo lo qual lo he recivido y me doy por entregado á mi entera satisfaccion y voluntad, y por ser de presente la entrega renuncio la eviccion de la non-numerata pecunia de la y demas de laso. Mediante lo qual me aparto y separo del derecho de propriedad, posecion, util, dominio, y senorio, quo d'ha tierra habia tierra y todo lo cedo y traspaso á favor de comprador ó enquien su causa ó derecho habiere, para que como suya propria, lo posea, venda, y enagena á su voluntad, en virtud de esta escritura que á su favor, otorgo en senal de real entrega por lo que ha de sin visto haver adquerido su posecion, sin que necesito de otra prueva de que le relevo y me obligo á la eviccion, seguridad, y saniamento de esta venta en vastan le forma á de derecho. Por lo que doy permiso á las justicias de S. M. me apremien á su cumplimiento con el rigor de sentencia, consentida y posead en autoridad *que sgada* sobre que renuncio todas las leyes á mi favor con la general que lo proluve, en cuyo testimonio es echa la carta en el puesto de Concordia, á las tres dias del mes de Septiembre de mil ochocientos tres, y estando presente Dn. José Vidal, acepto á su favor esta escritura, y por ella recivo comprado el dicho pano de tierra, en la precio y conformidad, que me va vendida, de lo que me doy por satisfecho á mi voluntad. Yo, Dn. Estevan Minor, capitan de los N. S. exer. hallandome con licencia del Govierno superior en dicho puesto, y siendo necesario autorizan esta venta, doy fee conosco á los otorgantes, que lo firmaron con migo, Dn. Daniel Doglas, Dn. Frederico Zervan, y Dn. Roberto Parqueson, testigos presentes.

(Signed) THOMAS THOMPSON.
ESTEVAN MINOR,
ROBERT PARKISON,
DANIEL DOUGLASS.

STATE OF LOUISIANA, *Parish of Concordia:*

I, James Dunlap, parish judge of the parish of Concordia, and ex officio register for said parish, do hereby certify the foregoing to be a true transcript from the record book "B," in my office, as found on pages 91 and 92 of said record book.

Given under my hand and seal of office, this 21st day of July, 1841.

[SEAL.] JAMES DUNLAP, *Parish Judge.*

Translation of act of sale from Thomas Thompson to Joseph Vidal, marked "C. C."

Know all men whom this sheet may see, that I, Thomas Thompson, resident of the post of Concordia, acknowledge that I sell, really and in effect, to Don Joseph Vidal, commandant of this post, a tract of lands situate on the west side of the Mississippi, which contains four hundred

and forty-eight arpens of land, being the tract which has been conceded to me according to the exposition of the plan and title of the said land, which I deliver to Don Joseph Vidal, in whoms favor I have disposed of said land, which adjoins that conceded to Don Joseph Vidal and Philepe Engel, and bounded on the west by the Lake Concordia; and I hereby sell it, clear of mortgages or embarrassments, for the sum of four thousand dollars, of which two thousand five hundred in effective cash, and the remainder or balance in other effects, all of which I have received, and remain entirely satisfied as being of my free will, and the delivery whereof is hereby made by me, renouncing to all pecuniary demands hereafter in this business. By means of which I desist and separate myself of the right of property, possession, and hereditaments I had of said land; all of which I cede and transfer in favor of said purchaser, or whomever he may substitute to himself that I had, and that as his own he may possess, sell, and alienate to his will, in virtue of this instrument; that in his favor I grant real delivery of the same as has been stated, he having acquired the possession of the same without necessitating any other process of which I hereby exonerate him, and bind myself to the validity and security of this bill of sale in sufficient form of right. I hereby empower the Instruary of his majesty that they bind me to its fulfilment, with rigor of sentence passed by their authorities, renouncing to all laws in my favor that might be in this case.

In testimony whereof I have dated this sheet at the post of Concordia, the thirteenth day of the month of September, in the year one thousand eight hundred and three, being present Don Joseph Vidal, who accepted in his favor this writing, by which he received or bought the said tract of land for the price and conditions I have sold to him, for which I stand satisfied of my voluntary act.

I, Don Estevan or Stephen Minor, captain of the royal armies, being empowered with the permission of the superior government in this post, and being necessary to authorize this sale, I certify in faith, to know the grantors who signed it with me, Don Daniel Doglas, Don Frederico Zervan, and Don Roberte Parqueson, witnesses present.

(Signed,) THOMAS THOMPSON.

ESTEVAN MINOR,
ROBERT PARQUESON,
DANL. DOUGLASS,

Confirmation to Joseph Vidal.

"D."

A No. 19. Western district, Orleans Territory, Register's No. 279, Concordia.

The commissioners appointed for the purpose of ascertaining the rights of persons to lands within the district and territory aforesaid, do certify, that Joseph Vidal, of the county of Concordia, is confirmed in his claim to a tract of land containing four hundred and forty-eight superficial arpens, equal to three hundred and seventy-nine $\frac{13}{100}$ American acres, having a front of eight arpens on the Mississippi river, by which it

1566.

is bounded on the southeast, on the northwest by Lake Concordia, on the northeast by other lands belonging to the claimant, and on the southwest by Philip Engle's land; lying between two parallel lines, running north forty-five degrees west, from the Mississippi to the Lake Concordia, situate in the county of Concordia. By virtue of a grant under the authority of the Spanish Government to Thomas Thompson, bearing date the third day of August, in the year one thousand eight hundred and two, under the signature of Juan Ventura Morales, then intendent of the province of Louisiana, having such form and marks, natural and artificial, as are represented in a plat thereof, returned by Don Carlos Laveau Trudeau, the surveyor general of the province of Louisiana.

Given under our hands at Opelousas church, this twenty-second day of January, in the year one thousand eight hundred and eleven, and in the thirty-fifth year of the independence of the United States.

WM. GARRARD,
LEVIN WAILES.
Commissioners.

Attest: JOHN THOMPSON,
Clerk of the board.

Sale from J. Vidal to Samuel Davis.

"E."

This indenture, made and concluded upon this seventeenth day of November, in the year of our Lord one thousand eight hundred and seventeen, between Joseph Vidal, senior, of the parish of Concordia, in the State of Louisiana, of the one part, and Samuel Davis, of the city of Natchez, in the State of Mississippi, (at present of the parish of Concordia aforesaid,) of the other part, witnesseth: That the said Joseph Vidal, for and in consideration of the sum of forty thousand dollars to him in hand paid by the said Samuel Davis, the receipt whereof is hereby acknowledged, and thereof and therefrom doth forever acquit and discharge the said Samuel, his heirs, executors, and administrators, by these presents hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm, unto the said Samuel Davis, his heirs and assigns, the following property, both real and personal, to wit:

All that certain plantation and tract of land situate, lying, and being in the parish of Concordia aforesaid, on the west margin of the river Mississippi, immediately opposite the city of Natchez, on which the said Joseph Vidal now resides, and commonly known by the name of Concordia, containing in all twelve hundred and forty-eight arpents of land, eight hundred arpents of which said tract was granted by the Spanish government to the said Joseph Vidal, by grant bearing date the third day of August, in the year of our Lord one thousand eight hundred and two, and the remaining four hundred and forty-eight arpents, adjoining the aforesaid grant, on the lower side, granted by the Spanish government to a certain Thomas Thompson, and sold and conveyed by the said Thomas Thompson to the said Joseph Vidal, by deed bearing

date the thirteenth day of September, in the year of our Lord one thousand eight hundred and three; which said several tracts of land have been confirmed to the said Joseph Vidal by the board of commissioners of the land office for the western district of the State of Louisiana, reference being had to said grants, and other documents, will more fully appear: on which said tract of land and plantation is laid off the town of Vidalia, and on which are erected and built an extensive steam, saw and grist mill, a cotton gin, and a number of dwelling-houses, and other out-houses, now the property of the said Joseph Vidal. Also the said steam saw and grist mill, with all the implements, tools, and appurtenances thereunto belonging, and necessary in conducting the same, now in the possession of the said Joseph Vidal. Also all the right, title, interest, claim, and demand of the said Joseph Vidal, to the free and exclusive right and privileges to the exercise of a public ferry from the said plantation to the city of Natchez, being the same right and privileges derived from the Spanish government by grant to the aforesaid Thomas Thompson, and by him sold and conveyed to the said Joseph Vidal, by bill of sale bearing date the sixteenth day of October, in the year of our Lord one thousand eight hundred and three, together with the ferry-house, and other implements attached to said ferry necessary to conduct and enjoy the same. Also all the right, title, interest, claim, and demand of the said Joseph Vidal, of, in, and to three several lots of ground adjoining the aforesaid tract of land, and fronting on the river Mississippi, being the same lots granted under the Spanish government to Romezes, and purchased from Eliza Middleton by the said Joseph Vidal, by bill of sale bearing date the twentieth day of January, in the year of our Lord one thousand eight hundred and seven; on part of which said lots the court-house and jail of the parish aforesaid are situated. Also all the estate, right, title, interest, claim, and demand of the said Joseph Vidal, of, in, and to all and any town lots in the town of Vidalia, on the premises aforesaid, that remain unsold, and not disposed of by the said Joseph Vidal at the date of these presents, with all and singular the hereditaments and appurtenances thereunto belonging. Also all the right, title, interest, claim, and demand of the said Joseph Vidal, in law and equity, to any lands, or other real property, situate upon, adjoining, or attached to, or appertaining to the aforesaid tract of land and premises hereby sold and conveyed, to the same extent, and with all the legal rights and privileges which the said Joseph Vidal now enjoys, or might hereafter enjoy, to the same. Also all the stock upon the plantation and premises aforesaid, consisting of horses, mules, oxen, horned cattle, sheep, and hogs; also all the farming utensils belonging and appertaining to the aforesaid plantation and gin. To have and to hold the said plantation and tract of land, the said steam, saw, and grist mill, cotton gin, the said three lots of ground, and the said town lots in the town of Vidalia, the said ferry and ferry-house, the said stock upon the premises aforesaid, and the said farming utensils, and other property herein and hereby sold and conveyed, or intended so to be, to the said Samuel Davis, together with all and singu-

lar the buildings, improvements, dwelling-houses, out-houses, woods, ways, waters, water courses, rights, liberties, privileges, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto him, the said Samuel Davis, his heirs and assigns, to the only proper benefit of him, the said Samuel, his heirs and assigns, forever. And the said Joseph Vidal hereby, and at the execution of these presents, delivers over and transfers to the said Samuel all the original grants and title papers; also all the deeds of conveyance, and all other documents appertaining to the titles of the aforesaid premises, such as are at present in his hands and possession.

In testimony whereof the said Joseph Vidal hath hereunto set his hand and executed this conveyance, in presence of the undersigned witnesses, the day and year first above written.

J. VIDAL.

Signed, executed, and delivered, in the presence of us—
JAMES DUNLAP,
A. M. FELTUS.

STATE OF MISSISSIPPI,
Parish of Concordia, ss:

Be it remembered, that on the day of the date hereof, personally before the undersigned, judge in and for the parish aforesaid, appeared Joseph Vidal, senr., and acknowledged the foregoing instrument of writing to be his free and voluntary act and deed for the purposes therein contained, and desired the same to be recorded as such.

Given under my hand, this eighth day of December, in the year of our Lord one thousand eight hundred and seventeen.

JNO. PERKINS,
Judge of the parish of Concordia.

STATE OF LOUISIANA,
Parish of Concordia, ss:

I certify the foregoing to be a true copy from the record in my office.

In testimony whereof I have hereunto set my hand and seal of office, this thirty-first day of March, A. D. 1836.

G. W. KEETON, *P. Judge.*

Ordinance of the Police Jury.

"F."

An ordinance to amend an ordinance entitled an ordinance to establish public ferries, and to fix a parish tax thereon, ordained the 28th day of November, 1834.

Section 1. Be it ordained by the Police Jury of the parish of Concordia, That the treasurer of the parish of Concordia be authorized, and it is hereby made his duty, to sell from time to time, after ten days public notice, either at private sale or at public auction, to the highest bidder, as he shall judge expedient, the exclusive privilege of keeping a ferry across the Mississippi river, from a point opposite to the town of

Grand Gulf, one across said river from a point opposite to the town of Rodney, and one opposite to the city of Natchez; and also all other ferries heretofore established by an ordinance or ordinances of the said Police Jury, for a term of not less than one year, and not more than three years. And that it shall be the duty of the said parish treasurer to take bond with security for the payment of the price of said leases or sales, payable at the end of the year when the lease is made for the term of one year, and payable in equal annual instalments when the lease is made, *shall be made*, at a term exceeding one year.

Sec. 2. Be it ordained, That all lessees who shall have purchased the exclusive privileges aforesaid, shall be bound to furnish, and to keep in readiness, safe, suitable, and convenient boats, necessary to cross all persons that may require it, together with their cattle, horses, teams, vehicles, baggage, &c.; that they shall be bound to cross all persons that may require it without delay, with their cattle, horses, teams, vehicles, and baggage, &c., between the hours of sunrise and sunset, at all times during the year, at the rates of ferriage heretofore established, and physicians at all hours of the night at double those rates of ferriage.

Ordained April 4, 1839.

CHARLES N. ROWLEY, *President*.

Attest: JOHN H. HEWITT, *Clerk*.

Advertisement of ferry.

"G."

Public sale.

STATE OF LOUISIANA, *parish of Concordia, ss:*

In pursuance of the powers in me vested by an ordinance of the Police Jury of said parish and State, entitled an ordinance to establish public ferries, and to fix a parish tax thereon, ordained the 4th April, 1839, I will offer for sale at public auction to the highest bidder, (unless previously disposed of at private sale,) at the door of the court-house, in the town of Vidalia, on Monday, the 10th day of February next, (1840,) at 12 o'clock, M., the exclusive privilege of keeping a ferry across the Mississippi river, from a point opposite to the town of Grand Gulf, Mississippi; one across said river opposite to the town of Rodney, Mississippi; and one across said river from a point opposite the city of Natchez, Mississippi; and all other ferries heretofore established by any ordinance or ordinances of the Police Jury aforesaid, for a term not less than one nor more than three years.

Terms and conditions of sale.

The purchaser or purchasers shall furnish bond, with security for the payment of the price of the said sales, payable at the end of the year when said sales are made for the term of one year, and payable in equal annual instalments when the sale shall be made for a term exceeding one year.

G. W. KEETON, *Parish treasurer*.

Vidalia, La., January 27th, 1840.

Section 8, 9, *and* 10, *of an ordinance of the Police Jury, passed* 9*th August*, 1813, *marked* "H."

Section 8. Whereas the rates and regulations of the ferries on the Mississippi, and other water courses within this parish, are exorbitant and oppressive to the inhabitants thereof:

Resolved, That no person or persons shall, from and after the promulgation of this resolution, be allowed to demand or receive payment for the transportation of persons or property within this parish, without first obtaining licence for the same, agreeably to and by virtue of an act entitled "An act for the regulation of ferries," passed by the legislative council on the 19th of April, 1805. That for the ferry at Vidalia the following rates, and no more, be demanded or received: For every man and horse, 50 cents; each foot passenger, 12½; each and every head of black cattle, horses, or mules, 37½ cents; each barrel, or size thereof, 6¼ cents; each hog or sheep, 12½ cents; and lastly, for every wheel carriage, at the rate of 25 cents per wheel; and the rates of all other ferries in the parish shall be established on application or licence to the parish judge, as may seem most just and equitable. That any person or persons violating this resolution, agreeable to the true intent and meaning thereof, shall forfeit and pay the sum of five dollars, to be recovered, with costs of suit, before any court having competent jurisdiction—one-half of the benefit to the parish, and the other half to the person bringing suit.

9. Resolved, That John Perkins and John D. Smith be, and are hereby authorized and instructed, to confer with the city council of Natchez, and to use their best endeavors to lessen the present rates of ferriage, which are evidently too high and oppressive to the inhabitants of this parish.

10. Resolved, That Daniel B. Morgan and John D. Smith be, and are hereby authorized and instructed, to use their best endeavors to inquire how far this parish is entitled the right of letting ferries for hire within the same, and make report to the next assembly.

(Signed at foot of the entire ordinance.)

JOHN PERKINS,
President of the police assembly.

Attest: THOMAS FREELAND, *Secretary*.

Exceptions of plaintiff's counsel.

SAMUEL DAVIS
vs.
THE POLICE JURY.

Be it remembered, that on the trial of this case the plaintiff having proved that the point at which the ferry was kept was on a tract of land immediately adjoining the Thompson tract, which also belonged to Vidal, and after him to Davis, offered, by Thomas Alexander, to prove that the public convenience was promoted by the ferry being kept at this point, a short distance above the upper line of the Thompson tract;

and the defendants' counsel, having objected to the testimony on the ground of being irrelevant, and the objection being sustained by the court, this bill of exceptions was tendered and signed.

B. G. TENNEY, *Judge* 9 *dist*.

Filed 12 June, 1841.

W. T. PROUD, *Clerk*.

Plaintiff's bill of exceptions.

SAMUEL DAVIS
vs.
THE POLICE JURY.

Be it remembered, that on the trial of this cause the plaintiff offered to prove, by Peter Little, a witness on the stand, the value of the Thompson tract of land at the time he, Thompson, sold the land to Vidal, with the object, as stated, of showing that the land itself was worth an inconsiderable sum in comparison with what was given by Vidal for the land and ferry, and to shew that, without the right of ferry, it would not have sold for near the amount given by Vidal; and the defendants' counsel having objected to said testimony on the ground of irrelevancy, and the court having sustained the objection and rejected the testimony, this bill of exceptions was tendered and signed.

B. G. TENNEY, *Judge 9th dist*.

Filed June 12, 1841.

W. T. PROUD, *Clerk*.

In court, June 12th, 1841.

SAMUEL DAVIS
vs.
THE POLICE JURY. No. 536.

Bill of exceptions of plaintiff's counsel signed and filed.

In court, June 12, 1841.

SAMUEL DAVIS
vs.
THE POLICE JURY. No. 536.

Second bill of exceptions of plaintiff's counsel signed and filed.

In court, June 12, 1841.

SAMUEL DAVIS
vs.
THE POLICE JURY. No. 536.

The jury, after hearing the evidence, arguments of counsel, and charge of the court, retired to their room to consider their verdict.

In court, June 12, 1841.

SAMUEL DAVIS
vs.
THE POLICE JURY. No. 536.

The jury empannelled in this case returned into court with the fol-

lowing verdict, viz: "Verdict for defendants, with four hundred dollars damages.

PETER LITTLE, *Foreman*."

Which was ordered to be recorded.

In court, June 14th, 1841.

SAMUEL DAVIS vs. THE POLICE JURY. } No. 536.

Bill of exceptions of defendant's counsel signed and filed.

Defendant's bill of exceptions.

SAMUEL DAVIS vs. THE POLICE JURY. } No. 536.

NINTH DISTRICT COURT, *Parish of Concordia:*

Be it remembered, that, upon the trial of this cause, plaintiff's counsel offered to introduce in evidence the document marked "B;" to the introduction of which defendant's counsel objected, on the ground that said document was not authentic, and that the signature thereto, of the Marquis de Casa Calva, was in no manner proved; and that the signature of Thomas Thompson, to the transfer of the ferry to Joseph Vidal, written on said document, was not duly proved by a comparison by experts of said signature of said Thompson to the petition addressed to the Governor for a grant of the ferry, on the ground that signature to said petition had not been previously proved, and was not in itself authentic, and therefore could not be used for the purpose of proving the genuineness of another signature of said Thompson by a comparison with it; and on the further ground that, even admitting the signature of said Thompson to said petition to be genuine and authentic, still it was not competent to prove the genuineness of the signature of said Thompson to the transfer of the ferry by a comparison by experts with that signature alone; that the law requires a comparison with more signatures and writings than one to make proof by comparison of experts; which objections were overruled by the court, and said document admitted, after the signature of the subscribing witness was proved, after the comparison by experts of one alleged signature of said Thompson (viz., that to the transfer) with the signature to the petition alone; to which opinion of the court, overruling his objections and admitting said documents, defendant's counsel excepts, and tenders this his bill of exceptions.

And further, plaintiff's counsel exhibited in court and exposed to view a book, purporting to be a record book taken from the office of the parish judge and recorder of mortgages for the parish of Concordia, and read from said book, which was represented by plaintiff to be a transcript of the above documents, described as marked "B and C," for the purpose of proving that said documents had been recorded; after which, defendant's counsel offered a witness to prove, by the inspection of said book and said transcripts therein, said inspection to be made in

open court while the cause was on trial, that what was spread on said book was represented by plaintiff to be transcripts of said documents, was not certified to be copies of any acts whatever, nor was the record signed or attested by the parish judge, or any person whatever, and that there was in fact nothing on said book to show that what was represented to the said transcripts and record was genuine; and the admission of said witness to prove said facts was objected to by plaintiff's counsel, on the ground that said testimony might go to contradict the certificate of the parish judge, which could not be done; and besides, that every thing defendants had a right to require would be furnished *and* them by the certificate of the parish judge; and the court sustained said objections and rejected the witness; to which opinion of the court defendant's counsel excepted, and tenders this his bill of exceptions.

And further, defendant offered a witness to prove Thomas Thompson never did cut out the road to the bayou Cocodrillo from the post of Concordia, as he proposed to do in his petition to the Marquis de Casa Calva for the privilege of keeping the ferry from his plantation to Natchez, and which was made the condition of the alleged grant from the Governor, who directed it to be done under the superintendence of the commandant of the post of Concordia; which evidence was objected to on the ground that it would go to contradict the certificate of the commandant, J. Vidal, that said road had been cut out by said Thompson, as he had proposed and was required to do, and that said certificate could not be contradicted by parol testimony, nor the contrary shewn; which objections were sustained by the court, and the testimony rejected; to which opinion of the court, rejecting said testimony, defendant's counsel excepted, and tenders this his bill of exceptions.

And further, the defendant's counsel offered to introduce in evidence the documents, marked I, J, K, and L, (pages 43, 44, 45, and 46,) hereto attached and made part, as a commencement of proof to shew that the authorities of the parish of Concordia had exercised a control over the ferry from the post of Concordia, across the river Mississippi, to the Natchez landing, for a part of the time at least during which plaintiff and his authors herein [are said] to have held said ferry, and to have acquired a right and title thereto by prescription; which evidence was objected to by plaintiff's counsel on the ground that it was entirely irrelevant to the matters at issue, and that it went to prove facts or things that were res inter alios acta; and that, by their admission, the defendant would be allowed, by their own expartists, to make evidence of them for themselves; which objections were sustained, and said documents rejected; to which opinion of the court defendant's counsel excepts, and tenders this his bill of exceptions, which, together with the foregoing four bills, are signed by the court in one, this 14th day of June, 1841.

B. G. TENNEY, *Judge 9th dist.*

Filed 14 June, 1841.

W. T. PROUD, *Clerk.*

1570.
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Judgment from the minutes.—June 14th, 1841.

SAMUEL DAVIS
vs.
POLICE JURY. } No. 536.

By reason of the law and evidence being in favor of the defendants in injunction, the Police Jury of the parish of Concordia, and of the verdict of the jury rendered in their favor, and against the plaintiff, Samuel Davis, upon a full trial of the merits of the cause, it is therefore ordered, adjudged, and decreed, that the injunction in this suit obtained be dissolved and set aside, and that the defendant recover of the said plaintiff, Samuel Davis, for the use of the parish of Concordia, the sum of four hundred dollars damages, and the costs of suit to be taxed.

Extract from the minutes.—The 16th June, 1841.

SAMUEL DAVIS
vs.
THE POLICE JURY. } No. 536.

Motion for new trial filed.

Motion for new trial.

SAMUEL DAVIS
vs.
THE POLICE JURY, Concordia.

District court, parish of Concordia.

The plaintiff, Samuel Davis, by his counsel, now moves the court for a new trial, on the ground that the verdict of the jury is contrary to law and the evidence.

R. N. & A. N. OGDEN,
Atty's for plaintiff.

Filed 16th June, 1841.

W. T. PROUD, *Clerk*.

Extract from the minutes.

SAMUEL DAVIS
vs.
THE POLICE JURY. } No. 536.

Motion for new trial overruled.

Final judgment.

SAMUEL DAVIS
vs.
THE POLICE JURY, parish of Concordia. } No. 536.

Ninth district court, parish of Concordia.

By reason of the law and evidence being in favor of the defendants in injunction, the Police Jury of the parish of Concordia, and of the

verdict of the jury rendered in their favor, and against the plaintiff, Samuel Davis, upon a full trial of the merits of the cause, it is therefore ordered, adjudged, and decreed, that the injunction in this suit obtained be dissolved and set aside, and that the said defendants recover of the said plaintiff, Samuel Davis, for the use of the parish of Concordia, the sum of four hundred dollars damages, and the costs of suit to be taxed.

Read and signed in open court, this 21st day of June, A. D. 1841.

B. G. TENNEY, *Judge 9th dist.*

Filed 21st June, 1841.

W. T. PROUD, *Clerk.*

Petition of appeal.

To the honorable B. G. Tenney, district judge, at the ninth judicial district of the State of Louisiana, in and for the parish of Concordia.

The petition of Samuel Davis, late residing in the city of Natchez, State of Mississippi, respectfully represents, that at the June term of your honorable court, in a certain suit therein pending, wherein your petitioner was plaintiff, and the Police Jury of the parish of Concordia defendants, a final judgment was rendered against your petitioner, and in favor of the said Police Jury, respecting the demand of your petitioner as plaintiff, and sentencing him to pay to said defendants the sum of four hundred dollars; in which judgment your petitioner avers there was error, that said judgment should have been rendered in favor of your petitioner, and against said defendant; and your petitioner will sustain an irreparable injury unless allowed an appeal therefrom to the supreme court of the State. Wherefore your petitioner prays that he may be allowed a suspensive appeal therefrom, returnable to the next supreme court to be holden at Alexandria for the western district of the State on the first Monday of October next, on petitioner's giving bond and security as required by law.

R. N. & A. N. OGDEN,
Atty's for plaintiff.

Order of appeal.

Let an appeal be granted as prayed for in the foregoing petition, returnable on the first Monday of October next, on petitioner's giving bond and security in the sum of eight hundred dollars, conditioned according to law, and let stay execution.

Done and signed in open court, this 25th day of June, A. D. 1841.

B. G. TENNEY, *Judge 9th dist.*

Filed 25th June, 1841.

W. T. PROUD, *Clerk.*

Appeal bond.

STATE OF LOUISIANA, *Parish of Concordia:*

Be it known and remembered, that we, Samuel Davis, late residing in the city of Natchez, State of Mississippi, now of the city of Philadel-

phia, as principal, and William T. Proud, of the parish of Concordia, and State of Louisiana, as security, are held and firmly bound unto the Police Jury of the Parish of Concordia in the sum of eight hundred dollars, lawful money of the United States; for the payment whereof, well and truly to be made to the said Police Jury, their successors in office, or assigns, we bind ourselves, our heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents, dated, executed, and delivered this 10th day of July, A. D. 1841. Whereas the above bound Samuel Davis has prayed for, and obtained, an order of appeal from a certain final judgment rendered against him in the ninth district court of the State of Louisiana, holden in and for the parish of Concordia, on the 21st day of June, A. D. 1841, in a suit wherein the said Davis is plaintiff, and the said Police Jury, of the parish of Concordia, defendants, which said appeal is made returnable to the next supreme court to be holden at Alexandria, for the western district of the State of Louisiana, on the first Monday of October next, A. D. 1841.

Now the condition of this obligation is such, that if the said appellant, Samuel Davis, shall prosecute his said appeal with effect at the next term of the said Supreme Court, or shall pay or satisfy such judgment as may be rendered against him in the premises, in case he should be cast in said appeal, then this obligation shall become null and void, otherwise remain in full force and virtue.

Signed and delivered on the day and date above written.

SAMUEL DAVIS,
By W. B. SEPRONS, *his agent*.
W. T. PROUD.

In presence of—PETER ALEXANDER.

W. T. PROUD, *Clerk*.

Filed 10th July, 1841.

W. T. PROUD, *Clerk*.

Document marked "J," referred to in plaintiff's bill of exceptions.

To the honorable David Latimore, parish judge in and for the parish of Concordia, Orleans territory.

The petition of Ruben Nicholls, of the parish aforesaid, respectfully represents, that the license for keeping the ferry across the Mississippi river, from Natchez to the post of Concordia, expired on the seventh of March last, therefore prays your honor to grant him license to keep ferry at said place, under the regulations of the statute in such case made and provided, to take date from the said seventh of March; and your petitioner, as in duty, &c.

13th April, 1840. RUBIM NICOLS.

STATE OF LOUISIANA, *Parish of Concordia:*

I certify the above to be a true copy from the original, on file in my office.

In testimony whereof I have hereunto set my hand, and the seal of my office, at Vidalia, this 11th day of April, A. D. 1840.

G. W. KEETON, *P. Judge*.

Document referred to in plaintiff's bill of exceptions, marked "I."

THE STATE OF LOUISIANA, *Parish of Concordia:*

Be it remembered, that on the 14th day of August, in the year of our Lord one thousand eight hundred and thirteen, personally, before the undersigned, judge of the parish aforesaid, appeared William Thompson, and acknowledged himself indebted to the government of the State of Louisiana in the sum of one hundred dollars, upon this condition, that if the said William Thompson shall faithfully keep and attend a ferry across the Mississippi river, from the plantation of Joseph Vidal, for one year from the date herein, with sufficient and safe boats, and with the necessary hands to work the same, and to give due and proper attendance at all hours, then the above obligation to be void, otherwise to be and remain in full force and virtue.

WILLIAM THOMPSON. [SEAL.]

Signed and acknowledged before me, the day and year above written.

JOHN PERKINS,
Judge of the parish of Concordia.

STATE OF LOUISIANA, *Parish of Concordia:*

I certify the above to be a true copy of the original, on file in my office.

In testimony whereof I have hereunto set my hand, and the seal of my office, at Vidalia, this 11th day of April, A. D. 1840.

G. W. KEETON, *P. Judge.*

Document marked "K."

ORLEANS TERRITORY, *Parish of Concordia:*

Be it remembered, that on this seventh day of March, in the year of our Lord one thousand eight hundred and twelve, personally appeared before the undersigned, judge of the parish aforesaid, Oliver Fairchild, and acknowledged himself indebted to the government of the territory of Orleans in the sum of one hundred dollars, to be levied of his proper goods and chattels, lands and tenements, upon the condition that, whereas, on the day of the date hereof, the said Oliver Fairchild hath taken out license to keep a ferry from the town of Vidalia, across the river Mississippi, to Natchez, at the usual place of keeping the same, for one year from the 7th day of March, 1812.

Now if the said Oliver shall faithfully keep and attend such ferry, with such safe boat and boats, with many men, and such implements to work the same as shall be deemed necessary, at such rates as is or shall be legally determined upon, then [the] above obligation or recognisance to be void, otherwise to be and remain in full force and virtue.

Given under my hand, this seventh day of March, in the year of our Lord one thousand eight hundred and twelve.

JAMES DUNLAP,
Judge of the parish of Concordia.

STATE OF LOUISIANA, *Parish of Concordia:*

I certify the above to be a true copy of the original, on file in my office.

In testimony whereof I have hereunto set my hand, and the seal of my office, at Vidalia, this 11th day of April, 1841.

G. W. KEETON, *P. Judge.*

Document marked "L."

ORLEANS TERRITORY, *Parish of Concordia:*

Be it remembered, that on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and ten, personally appeared before the undersigned, judge in and for the parish aforesaid, Rubin Nichols, and acknowledged himself to owe and be indebted to the government of the territory of Orleans in the sum of one hundred dollars, to be levied of his proper goods and chattels, lands and tenements, upon this condition, that if the said Ruben Nichols shall faithfully keep and attend a ferry across the Mississippi river, from the west margin thereof, opposite the Natchez landing, at the usual place of keeping the same, with sufficient boats, hands, and implements to work the same, as shall be decreed necessary, and at such rates as may be legally determined on, for the space of one year, from the seventh day of March last, then and in that case this obligation recognisance to be void, otherwise to be and remain in full force and virtue.

RUBEN NICHOLS.

Signed and acknowledged the day and year first above written, before

D. LATTIMORE,
Judge of the parish of Concordia.

STATE OF LOUISIANA, *Parish of Concordia:*

I certify the above to be a true copy from the original, on file in my office.

In testimony whereof I have hereunto set my hand, and the seal of my office, at Vidalia, the 11th day of April, A. D. 1841.

G. W. KEETON, *P. Judge.*

Citation of appeal.

SAMUEL DAVIS
vs.
The Police Jury of Concordia. } No. 536.

Ninth district court, parish of Concordia.

The State of Louisiana and said court, to John Routh, esq., president of the Police Jury of the parish of Concordia, residing in said parish of Concordia, State of Louisiana.

Whereas, Samuel Davis, plaintiff and appellant in the above styled suit, has filed in this court his petition, and obtained an order of appeal thereon from a certain final judgment rendered against him in said suit in this court on the 21st day of June, A. D. 1841, a copy of which petition and order of appeal accompanies this citation, which appeal is

returnable to the supreme court of the State of Louisiana, for the western district, to be holden at the town of Alexander on the first Monday in October next, A. D. 1841; and the said Samuel Davis, appellant, having given bond and security as required by law, and the order of the court—

You are therefore hereby cited to be and appear, either in person or by attorney, in the said supreme court for the western district, at the town of Alexandria aforesaid, on the said first Monday in October next, to answer to the said petition of appeal according to law.

Witness the honorable B. G. Tenney, judge of the ninth judicial district of the State of Louisiana, and presiding judge of this [L. S.] court, and the seal thereof, this 12th day of July, anno domini one thousand eight hundred and forty-one.

W. T. PROUD,
Clerk of said court

Received on the 12th day of July, 1841, and served on the 13th day of same month and year, by leaving a certified copy of this citation, and of appellant's petition, with the order of appeal written therein, with John Routh, president of the Police Jury of the parish of Concordia, in person, in this parish.

A. C. HUNTER, *Sheriff*.

Filed 13th July, 1841.

W. T. PROUD, *Clerk*.

Certificate.

THE STATE OF LOUISIANA, *Parish of Concordia:*

I, George W. Nicols, deputy clerk of the ninth district court of the State of Louisiana, in and for the parish of Concordia, hereby certify, that the foregoing pages, numbered 1 to 34 inclusive, contain a true and correct transcript of all the proceedings, and of all documents on file and of record in the suit wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendants, numbered 536 on the docket of this court, and of all the evidence on which said suit was tried.

In testimony whereof I hereunto set my hand and affix the seal of [SEAL.] said court, at Vidalia, this 26th day of July, anno domini one thousand eight hundred and forty-one.

G. W. NICOLS,
Deputy Clerk.

Filed October 4th, 1841.

A. L. BRINGHURST,
Deputy Clerk.

(Here ends the record of the first appeal.)

Proceedings in the Supreme Court.

Extract from the minutes.

Supreme court, western district, Alexandria.

Tuesday, October 12th, 1841.

The court met according to adjournment. Present, the honorable F. X. Martin, H. A. Bullard, A. Morphy, R. Garland.

SAMUEL DAVIS
vs. } 851.
THE POLICE JURY.

The argument of this case was commenced by Mr. Elgee, one of the counsel for the appellant, when the court adjourned till to-morrow morning, 9 o'clock.

Extract from the minutes.

Supreme court, western district, Alexandria.

October 13th, 1841.

The court met according to adjournment. Present, the honorable F. X. Martin, H. A. Bullard, A. Morphy, R. Garland.

SAMUEL DAVIS
vs. } 851.
THE POLICE JURY.

In this case the argument was resumed by Mr. Elgee, one of the counsel for the plaintiff, followed by Mr. Stacy for the defendants, and concluded by Mr. A. N. Ogden for the plaintiff.

Extract from the minutes.

Supreme court, western district, Alexandria.

Wednesday, October 27th, 1841.

The court met according to adjournment. Present, the honorables F. X. Martin, H. A. Bullard, A. Morphy, R. Garland.

SAMUEL DAVIS
vs. } 851.
THE POLICE JURY.

In this case, the judgment of the district court is therefore annulled, avoided, and reversed, the verdict of the jury set aside, and it is further ordered, that this case be remanded to the district court with direction to the judge to conform in the admission or rejection of testimony to the principles herein expressed, and otherwise proceed according to law, the defendants and appellees paying the costs of this appeal.

Opinion and Judgment.

Supreme court, western district.

October term, 1841.

SAMUEL DAVIS
vs. }
THE POLICE JURY.

Appeal from the district court of the 9th district.

The plaintiff alleges, that he is the owner of an exclusive privilege or right of ferry across the Mississippi river, from the place known as the post of Concordia, in that parish, to the city of Natchez. That his exclusive privilege extends one league above and below the point or place named in his grant, which is the front of a tract of land of eight arpents on the river, granted to Thomas Thompson, to whom this exclusive privilege was also granted, as one annexed to the land, by the governor general of Spain in the province of Louisiana This grant, he says, was made on the condition that Thompson should clear a public road or highway from the said post of Concordia to the Bayou Crocodile, which condition he specially alleges has been performed.

He further states, that the Police Jury of the parish have passed an ordinance directing the parish treasurer to sell at public or private sale the exclusive privilege of keeping a ferry for a certain length of time, across the aforesaid river, at the same place where his (plaintiff's) ferry crosses, which will be a great injury to him; that said parish treasurer is about to proceed to make a sale of said privilege, and will do so unless restrained by law. He prayed for damages and an injunction to arrest the execution of the ordinance.

The defendant admits the passing the ordinance, says it was legal and valid, and avow their intention to have it executed, unless prevented. They deny any exclusive privilege of keeping a ferry was ever granted by competent authority to Thompson, and if any ever was, they say it is null and void, because the terms and conditions have not been complied with or performed by the grantee, or those holding under him; and that it has been forfeited by non-user. That by the interference of the plaintiff with their just rights they have sustained heavy losses, they ask for a dissolution of the injunction and one thousand dollars damages.

The cause was tried by a jury; there was a "verdict for defendants with $400 damages," on which the court rendered judgment, dissolving the injunction, and decreed the plaintiff to pay the four hundred dollars, from which he appealed.

The plaintiff produced as evidence the petition of Thomas Thompson, addressed to the commandant of the post of Concordia, representing the importance of having a road from that place to the bayou Crocodile, and the inability of the inhabitants to make it without their expenses being paid by the government; he therefore proposes to make a road thirty or forty feet in width, provided the privilege of a ferry from his plantation to the landing at Natchez is granted him; this privilege to be attached to the plantation. He promises, if the ferry is granted, to keep the necessary flats and boats *and boats* to transport passengers, &c. The commandant Don José Vidal certifies to the governor at the foot of the petition the importance of the work, the inability of the inhabitants to perform it, the ability of Thompson to do what he promises, and recommends the propriety of the grant. These documents were presented to the Marquis de Casa Calvo, who, on the 19th of February, 1801, says, that if the petitioner shall make the road he proposes, under the

inspection of the commandant, he grants him the privilege he asks to be attached to his plantation; that from that place he shall have the exclusive privilege of a ferry across the river, demanding and receiving such tolls as shall be fixed by the commandant. It is proper to observe here, that the Marquis de Casa Calvo does not take upon himself any official capacity in this act, and the history of the province of Louisiana is silent as to his ever having been governor, unless he acted as such ex officio during the period between the death of Governor Gayoso, which occurred in the summer of 1799, and the arrival of Salcedo, who was appointed military and political governor on the 21st of November, 1799, or in the absence of the latter on some occasion.

On the 16th of February, 1802, Don Jose Vidal, the commandant, certified that the condition specified in the memorial had been performed under his inspection, and that Thompson was vested with the exclusive privilege granted. On the 13th of September, 1803, Thompson conveys the tract of land, without saying any thing about the ferry, to Don Jose Vidal, in consideration of the sum of $4,000 paid down, and on the 16th of October following he transfers in writing, on the back of the paper purporting to grant, to the same person, all the right, title, claim, and interest to the privilege granted, having, as he says, sold to him the plantation to which the said right of ferry is annexed.

This tract of land, with the right of ferry attached, and another tract adjoining, Vidal, in 1817, sold to the plaintiff, who has ever since kept up a ferry, but had the landing place on the adjoining or Vidal tract, as his immediate vendor seems also to have had.

A great deal of testimony was taken on both sides to show Thompson had or had not used the grant, and that Vidal and Davis, his assignees, had never used it from the front of the Thompson tract, but from a point a quarter to a half-mile above. Each party endeavored to exclude as much of the testimony of his opponent as possible, and both have so far succeeded as to bring the case before us in a very unsatisfactory manner, and in such a situation as prevents us from doing justice between them as it stands.

On the trial, the plaintiff having proved that there had always been a ferry kept by him and Vidal on the tract of land belonging to them, adjoining the Thompson tract, offered to prove the public convenience was promoted by the ferry being kept at that point, which evidence the judge refused to admit, and plaintiff excepted. We think the judge erred. The evidence ought to have been admitted, and the effect of it afterwards considered. We think the judge also erred in excluding the evidence offered by plaintiff to show that the Thompson tract of land was not worth, at the time it was sold, $4,000, without the right of ferry. It ought to have been received, and the effect weighed with other circumstances.

We further think the judge erred in excluding the evidence offered by defendants to prove Thomas Thompson never did make the road from the river to the Bayou Crocodile, as stated in the certificate of the commandant. The making of that road was the consideration for the

grant. The plaintiff, in his petition, tendered the defendants an issue on that point, in which they joined by a special denial. The plaintiff was permitted to show, by the commandant's certificate, the condition was performed, and the district judge was wrong in holding it to be conclusive. We think it only prima facie evidence, which the defendants may contradict. The commandant did not act in the matter in any judicial capacity; he was only a commissioner, or superintendent, to see a public work was executed; and no more sanctity is to be attached to his certificate than to presume he did his duty, and told the truth, and thereby throw the burden of proving a negative on the other party.

We think the judge also erred in excluding the documents I, J, K, and L, offered by the defendants to prove that, although the plaintiff had kept a ferry at the place he did, it was under the supervision and control of the Police Jury. The evidence was clearly admissible, to show an interruption, or want of the prescriptive right set up by plaintiff.

The judge did not err in admitting in evidence the record books from the parish judge's office, to prove the recording of the acts therein contained; nor did he err in permitting a person, who on oath said he understood the Spanish language, to read and translate those records to him and the jury, they not understanding that language.

We further think the judge did not err in admitting in evidence the instrument purporting to be the petition of Thomas Thompson, and the recommendation by Vidal, as commandant, and the grant signed by the Marquis de Casa Calvo, without proof of the signatures. They are prima facie evidence. That Vidal was the commandant of the post of Concordia at the time is a matter of history; that Casa Calvo was about that time an officer of high authority, in a military capacity, is also known; and it is possible he may have exercised some civil functions, as was frequently the case under the Spanish Government; but we do not believe he ever had a commission as governor of the province of Louisiana. Salcedo, we have stated, was appointed military and political governor in November, 1799, and he continued to be such at the time Spain transferred the province to France, on the 30th of November, 1803, on which occasion he and Casa Calvo acted as the commissioners of the King of Spain to deliver the country. Casa Calvo then was styled a brigadier in the King's armies, &c.: 2 vol. Land Laws, appendix 1, p. 165; idem, p. 529. This evidence being prima facie, the defendants are at liberty to contradict it, and may show that the Marquis de Casa Calvo was not governor, or acting as such, at the time of the grant. But, until some sufficient evidence is given to the contrary, we will presume an authority existed. 12 Peters, 410.

We think the judge did not err in admitting the transfer of the privilege or grant by Thompson to Vidal to be proved by comparison, after the signature of Minor, the subscribing witness, was proved, and it was shown he was dead. Had these facts not been shown, we think the comparison ought to have been made with more than one authentic or

admitted signature. O. C. C., p. 366, art. 226; L. C., art. 2,241; 2 M. R., 203; 9 L. R., 521; 11 L. R., 251; 1 N. S., 486.

The judgment of the district court is therefore annulled, avoided, and reversed, the verdict of the jury set aside, and it is further ordered that this case be remanded to the district court, with directions to the judge to conform, in the admission or rejection of testimony, to the principles herein expressed, and otherwise to proceed according to law, the defendants and appellees paying the costs of this appeal.

(Here end the proceedings of the Supreme court on the first appeal.)

Record of second Appeal.

THE STATE OF LOUISIANA,
Parish of Concordia:

District court of the ninth judicial district of the State, and for the parish aforesaid.

Record of Appeal.

Cause remanded for a new trial, at the October term of the supreme court, 1841.

SAMUEL DAVIS
vs.
POLICE JURY of the Parish of Concordia.

Extracts from the Minutes.

June term, 1842—6th.

Continued, and, by consent of parties, ordered, that the testimony of D. Lattimore and Thomas Alexander, residing in the parish of Concordia, be taken de bene esse, by filing interrogatories and notifying them to the opposite party in the usual manner, and also of any other witnesses residing in the parish; it being understood that the witnesses are to be personally present in court, and examined on the trial of this cause, if said witnesses are present in the parish and able to attend.

June 9th. Amended petition filed, subject to all legal objections.

December term, A. D. 1842—6th inst.

SAME
vs.
SAME. } No. 536.

Set for Thursday, the 8th inst.

9th December, 1842.

Jury waived by consent, and that the evidence taken down in open court, on the former trial, be used on the present trial.

Note of evidence.

All the evidence and documents offered on the former trial are now offered. (Pages 12 to 31, inclusive.)

Plaintiff offers in evidence the deposition of G. W. Lovelace, marked "A A A." (Pages 65 and 69.)

The deposition of John Perkins, marked "B B B." (Pages 71 and 75.)

The deposition of Gen'l Joseph Walker, marked "C C C." (Pages 78 and 81.)

The deposition of Polycarp Lamothe and Francis Henderson, marked "D D D." (Pages 84 and 87.)

The deposition of D. B. Morgan, "E E E." (Pages 92 and 96.)

The deposition of L. Bouligney, marked "F F F." (Pages 99 and 102.)

The deposition of R. Relf, "G G G." (Pages 104 and 107.)

The deposition of J. McDonough, "H H H." (Pages 109 and 111.)

The deposition of Dan'l W. Coxe, "I I I." (Pages 113 and 116.)

All taken under commission.

Peter Little sworn for the plaintiff. Says he lived near the post of Concordia in 1803, and before that time. Thinks that the Thompson tract of land, sold in 1803, would not have brought the price it sold for without the right of ferry attached to it; lands at that time were very little sought after, and at that time were of very little value. The public convenience has been promoted by the ferry being kept above the Thompson tract, where it has always been kept; has never heard of any opposition made by the citizens or by the authorities of the parish of Mr. Davis keeping the ferry higher up than the Thompson tract.

Cross questioned. Land situated near the post of Concordia would sell at a much higher price at that time on account of its location, than land equally good situated elsewhere. Says he was well acquainted with Thomas Thompson and Jos. Vidal, and that they were brothers-in-law; says the ferry has been kept by S. Davis and Vidal since 1803. The ferry was not worth more than the keeping of it up, up to 1808; witness states he thinks the ferry has been worth about $500 per annum, since it has been kept by Davis and Vidal. He thinks the lower limits of the corporation of Natchez extends down to some place about the upper line of the Thompson tract, may be it may go down to the lower line.

Daniel Vestner sworn for plaintiff. Witness says, that the lands about the post of Concordia in 1800 were of very little value, and that the lands were unimproved; thinks that unimproved lands anywhere about here in 1800 might have been bought for a less price than $10 per acre. In the vicinity opposite Natchez, lands were more valuable than elsewhere, and that lands were worth more after the change of government than they were previously. In 1808, witness bought land at 10 or 12 miles from here at $3 per acre, and after clearing about 60 acres, he sold it in 1809 or '10, at $5 per acre.

Cross questioned. In 1803, the commandant resided here, and he had possession of the land attached to the post of Concordia.

Same witness re-examined by plaintiff. In 1803 or '4, there were about 20 or 30 acres deadened and in cultivation on the Thompson

tract; says that there is a considerable extent of batture in front of Mr. Davis's land, where the ferry is now kept, and that it is now traversed by the public in going to and from the ferry to the different points where the boat lands, which varies with the different stages of the water. The extent of the batture spoken of is about one quarter of a mile long, and from 60 to 70 yards in width. All this batture is outside of the levee, between the levee and the Mississippi, in front of the Vidal tract; a very small portion of the batture extends down to the Thompson tract. The ferry is kept on the upper end of the batture.

A. C. Hunter, sworn for plaintiff. Says he would rather have the ferry below the point where it now is, at the former place of landing, opposite the hotel. He thinks the former point of landing is above the Thompson tract. About three months in the year, when the water is very high, so as to cover the batture, the ferry boat lands opposite the hotel. The current is very strong on the opposite side of the river, and the boat always passes up past the upper landing before crossing. The upper landing is not as convenient as the lower, even when the walking is good.

The testimony of plaintiff here closed, with the exception of the witness, Wm. M. Shaw.

Dr. Lattimore, sworn for defendant. Says he has been a resident of the parish of Concordia since the year 1807 or 1808; between the years 1800 and 1807, he was a resident of the city of Natchez. He was appointed parish judge in this parish in the year 1808, and resigned in 1811. Witness says he saw the road known as the Thompson road, where it crossed obliquely Thompson's tract of land, at the end of the lake. He only saw that road a few hundred yards; the road as far as he observed was only a bridle way, as there were only horse tracks. Witness gave as his reason for observing the road that Mr. Engle pointed to the road and observed to witness, that that was the Thompson road. Witness says, that was a bridle way, with horse tracks, and does not recollect seeing any timber cut. The trees of natural growth were standing; "none cut;" this was in the year 1804 or '5; witness was never at the Cocodia till the year 1810, as he recollects. In 1803 or '4, witness was out as far as Mr. Hewell's on Lake Concordia; on the lake the road was open better; thinks a wagon or cart could have got along at that time on the lake as the road was better there; does not recollect seeing a road 30 or 40 feet wide in the years 1800, 1801, 1802, and 1803, cut out any distance whatever. The lake was settled as far as Chotard's place; between Chotard's place and the Cocodia there was several bayous, and only a bridle way between those points; this was in 1810. The road was open on the bank of the lake, but after passing Chotard's there were several deep bayous which made it impassable for carts. Witness knows no other road to Cocodia except this; witness does not know of a road in 1811, cut from the Mississippi river 20, 30, or 40 feet wide, to the Cocodia. In the years 1803, '4, and '5, witness knew of no road cut from the Mississippi river to the Cocodia, by which a person could pass with a cart or wagon, without winding their way

through the woods. Witness does not recollect seeing any road cut out by Walker, Thompson, and the neighbors, in 1803–'4. In 1803 there was a sort of Spanish settlement at this point, adjacent to the post of Concordia; besides the Spanish post, there was a settlement, a village, lots laid out, &c. The lower limits of the corporation of Natchez, in 1803, would not have extended down to the Thompson tract of land under the Spanish Government, and at present the lower limits of the corporation of Natchez would strike about the lower line of the Thompson tract.

Cross questioned. Witness purchased his property in this parish in 1805, and was over here frequently after that time. During the time witness was parish judge the Police Jury never attempted to exercise the right of ferry, or ever leased it to any one, and have not since, to witnesses recollection, until this present suit. Witness was engaged in a law suit with Saml. Davis, respecting the boundary line between the Thompson and witnesses tract adjoining it, which suit lasted for several years. Does not know of any one keeping the ferry for the last forty years, except Vidal, Davis, and Thompson, or persons under them.

Resumed in chief. The tract of land which witness purchased in 1805 adjoined the Thompson tract. Witness does not think it probable there could have been a road in the year 1805, thirty or forty feet wide, without his knowing it, leading from the post of Concordia to the Cocodia. The reason is, the present road has been cut within his recollection, near the old trace. Before purchasing the tract of land in 1805, witness examined it and went all round the tract. He says there was no road below, and the circumstance of the road having been cut out, upon or near the old, has brought him to the conclusion that there was no road above.

Thomas Alexander, sworn for defendant. Witness says he came to the parish of Concordia in 1807, and this has been his place of residence ever since, and he has lived in the neighborhood of the post of Concordia since he first came here. When he first came here, there was a road or path leading from the post of Concordia to Lake Concordia. There was no particular road travelled with teams; got along through the woods in the best way they could, in a zig-zag manner, until *the* struck the bank of the Lake Concordia. He knew of no other road at that time leading out in the direction from the post of Concordia to Cocodia. If there had been any road leading out towards Cocodia, suitable for carts or wagons, witness would have known it, because he was a great deal through the swamp in the vicinity of the post, and he never saw any thing at that time except bridle paths through the woods. Witness ever since 1809 has been living upon and cultivating a cotton plantation, immediately in the vicinity of the post of Concordia, and has been intimately acquainted with all the neighborhood. Witness knows that there was no road 20 or 30 feet wide, leading from the post of Concordia to the Cocodia in 1807. In 1818 or '19, (1808 or '9) Judge Perkins opened a road between himself and Dr. Lattimore, on the lower line of Lattimore's tract, leading out to the lake, and there was no sign of a road crossing that road.

William M. Shaw, on the part of the plaintiff, sworn. Witness keeps the ferry, and has kept it two years; says that it is more convenient to the public to keep the ferry on the Vidal tract than on the Thompson tract. The Natchez landing, on the point where the ferry boat lands, is about half a mile, or near that, above the point where it was kept on the Vidal tract in high water, and in low water the ferry is kept higher up, at a point nearly opposite to the Natchez landing. Has never heard of any complaints that the ferry is not kept below on the Thompson tract. The bank on the Natchez side of the river is so steep and rugged that it is impossible to have a landing below where it now is on that side; so that however low down the ferry might be kept on this side of the river, the crossing would have to be made to the point of the Natchez landing where the ferry boat now lands, to reach the incorporated limits of the city of Natchez.

Cross questioned. Witness is lessee of the ferry, and pays $500 a year. Mr. Davis has the privilege of crossing on the ferry free, which is worth in all his crossing for every thing $150 a year; witness thinks the labor bestowed on keeping a road and the landing, which he has done, and which Mr. Davis is bound to do, is worth about $20 a year. Witness was lessee of the lessee of the ferry for the year 1841, from the first of July, and 1842, and his lease expires 1st of January, 1843. Previous to the 1st of July, 1841, Davis had been receiving about $400 a year for the ferry for one or more. The road and landing is on Davis's land, which is outside of the levee. The landing and road referred to for part of the year is under water, being on the batture outside of the levee.

William B. Seprons, sworn for defendant. Witness says that Mr. Gobraw has leased the ferry ever since the year 1837, until Mr. Shaw took it; and during the last two years gave $400 a year for it; and Mr. Davis had the same privilege of crossing that he now has with Mr. Shaw.

Cross questioned. Witness thinks it is more to the convenience of the public to keep the ferry on the Vidal tract than on the Thompson tract; both tracts belong to Mr. Davis, and thinks that every one in the community will agree with him.

Edward Sparrow, sworn for defendant. Witness was sheriff in this parish for eight years previous to the year 1840, and that keepers of ferries paid taxes to the parish for the privilege of keeping ferries, during a part of that time. Mr. Davis, as well as others, paid a tax for keeping this ferry during part of that time, and thinks likewise paid a tax on a ferry at Fort Adams. The tax paid by Davis was $10 a year; some of the other ferries on the Mississippi river were taxed $5, and some lower. All established ferries in this parish were taxed, as well as witness remembers.

Defendant offers in evidence the testimony of Christopher Miller and Peter Little, marked "KKK," taken under commission, (pages 118 and 123.)

Document marked "LLL," (page 127.)
License marked "MMM," (page 128.)
Bond marked "NNN," (page 129.)
Bond, "OOO," (page 130.)
An ordinance to establish public ferries and to fix a parish tax thereon. Ordained 28th November, 1834, (page 132.)
Taken down in open court on the 8th December, 1842.

THOMAS EDWARDS, *Deputy Clerk.*

Filed 8th December, 1842.

THOMAS EDWARDS, *Deputy Clerk.*

Interrogatories to George W. Lovelace.

"AAA."

SAMUEL DAVIS
vs.
THE POLICE JURY OF THE PARISH OF CONCORDIA. } 536.

NINTH DISTRICT COURT, *Parish of Concordia:*

Interrogatories to be propounded to George W. Lovelace, a resident of the parish of Catahoula, witness for the plaintiff, whose answers, to be taken under commission, will be read in evidence on the trial of this cause.

1st. Did you or not at one time reside in the parish of Concordia, opposite the city of Natchez, in the State of Mississippi? If so, at what time did you reside there, or in what year did you first become acquainted with that section of country, and what was then your age?

2d. When did you first know a ferry to be kept at that point across the river Mississippi, and by whom was it kept?

3d. Have you any knowledge of a road having been made from the river Mississippi at that point to the bayou Cocodra or Crocodile? In what year have you a knowledge of a road between those points being first made, and by whom was said road made?

4th. Was there or not a road made and cut out from the post of Concordia to the said bayou Cocodra in the year 1801 or 1802, which went by the name of the Thompson road; and was it or not a road used by the public, in travelling to and from those points?

5th. Did you know Thomas Thompson? What time did your acquaintance with him first commence? Have you any knowledge of his having made the aforesaid road as any other road between those points, and at what time? Please state fully all you know on the subject.

6th. What description of country did the aforesaid road pass through? Was the country lightly and thinly timbered, or was it a dense cane brake, with heavy timber?

7th. Was or was not the said road a sufficient one to accommodate the line of travel at that time, and was it not used by horse, foot, and wagon passengers?

8th. Please state any facts within your knowledge, material to the plaintiff, as fully and particularly as if specially interrogated thereto.

SAMUEL DAVIS.

Cross interrogatories.

1st. Are you interested in this suit? If you answer that a road was made from the post of Concordia to the bayou Cocodra, what was the route of said road? Did it run along the margin of Lake Concordia, or did it run across to Trinity, from a point on the Mississippi river several miles below Vidalia; and was there or not a road or trail on both those routes to the bayou Cocodra? If so, which of the roads or traces was the one said to have been made by Thompson?

2d. Of what width was the road said to have been cut by Thompson in 1801 and 1802? That is, what width were all the trees, logs, brush, cane, and other obstructions, cut, cleared away, and removed? Was it so cut and cleared twenty or even ten feet wide? Was or was not the part of the said road or trace, adjoining the post of Concordia, cut by Thompson; and was or was not the way across the country a mere tract, such as is commonly called a bridle path, and was or was it not causewayed in the boggy places, and were or were not the bayous budged, and if they were, who was it done by? Please give definite and positive answers to all these questions.

3d. Was there or was there not, to your own knowledge, previous to the first of March, 1802, from the post of Concordia to the bayou Cocodra, a road cut and cleared all the way 30 feet wide, or any part of the way; if not, to what width was such a road cut and cleared of all obstructions? Was there or not a road cut and cleared to the width of thirty feet previous to the year 1810, from the post of Concordia to the bayou Cocodra, previous to the year 1810; and if so, by whom was it cut and cleared, and which way did it run?

4th. Was or was not Thomas Thompson the brother-in-law of Vidal, the commandant of the post of Concordia? State any thing you know of advantage to the defendant, as fully as if interrogated thereto.

STACY & SPARROW,
Attorney for Defendant.

Filed 7th May, 1842. W. T. PROUD, *Clerk.*

Commission.

THE STATE OF LOUISIANA,
Ninth district court, parish of Concordia:

To the honorable the parish judge of the parish of Catahoula, State of Louisiana, or to any justice of the peace of said parish.

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you George W. Lovelace, a resident of the parish of Catahoula, and him diligently examine on his oath or affirmation, touch-

Document marked "LLL," (page 127.)
License marked "MMM," (page 128.)
Bond marked "NNN," (page 129.)
Bond, "OOO," (page 130.)
An ordinance to establish public ferries and to fix a parish tax thereon. Ordained 28th November, 1834, (page 132.)
Taken down in open court on the 8th December, 1842.

THOMAS EDWARDS, *Deputy Clerk*.

Filed 8th December, 1842.

THOMAS EDWARDS, *Deputy Clerk*.

Interrogatories to George W. Lovelace.

"AAA."

SAMUEL DAVIS
vs.
THE POLICE JURY OF THE PARISH OF CONCORDIA. } 536.

NINTH DISTRICT COURT, *Parish of Concordia:*

Interrogatories to be propounded to George W. Lovelace, a resident of the parish of Catahoula, witness for the plaintiff, whose answers, to be taken under commission, will be read in evidence on the trial of this cause.

1st. Did you or not at one time reside in the parish of Concordia, opposite the city of Natchez, in the State of Mississippi? If so, at what time did you reside there, or in what year did you first become acquainted with that section of country, and what was then your age?

2d. When did you first know a ferry to be kept at that point across the river Mississippi, and by whom was it kept?

3d. Have you any knowledge of a road having been made from the river Mississippi at that point to the bayou Cocodra or Crocodile? In what year have you a knowledge of a road between those points being first made, and by whom was said road made?

4th. Was there or not a road made and cut out from the post of Concordia to the said bayou Cocodra in the year 1801 or 1802, which went by the name of the Thompson road; and was it or not a road used by the public, in travelling to and from those points?

5th. Did you know Thomas Thompson? What time did your acquaintance with him first commence? Have you any knowledge of his having made the aforesaid road as any other road between those points, and at what time? Please state fully all you know on the subject.

6th. What description of country did the aforesaid road pass through? Was the country lightly and thinly timbered, or was it a dense cane brake, with heavy timber?

7th. Was or was not the said road a sufficient one to accommodate the line of travel at that time, and was it not used by horse, foot, and wagon passengers?

8th. Please state any facts within your knowledge, material to the plaintiff, as fully and particularly as if specially interrogated thereto.

SAMUEL DAVIS.

Cross interrogatories.

1st. Are you interested in this suit? If you answer that a road was made from the post of Concordia to the bayou Cocodra, what was the route of said road? Did it run along the margin of Lake Concordia, or did it run across to Trinity, from a point on the Mississippi river several miles below Vidalia; and was there or not a road or trail on both those routes to the bayou Cocodra? If so, which of the roads or traces was the one said to have been made by Thompson?

2d. Of what width was the road said to have been cut by Thompson in 1801 and 1802? That is, what width were all the trees, logs, brush, cane, and other obstructions, cut, cleared away, and removed? Was it so cut and cleared twenty or even ten feet wide? Was or was not the part of the said road or trace, adjoining the post of Concordia, cut by Thompson; and was or was not the way across the country a mere tract, such as is commonly called a bridle path, and was or was it not causewayed in the boggy places, and were or were not the bayous budged, and if they were, who was it done by? Please give definite and positive answers to all these questions.

3d. Was there or was there not, to your own knowledge, previous to the first of March, 1802, from the post of Concordia to the bayou Cocodra, a road cut and cleared all the way 30 feet wide, or any part of the way; if not, to what width was such a road cut and cleared of all obstructions? Was there or not a road cut and cleared to the width of thirty feet previous to the year 1810, from the post of Concordia to the bayou Cocodra, previous to the year 1810; and if so, by whom was it cut and cleared, and which way did it run?

4th. Was or was not Thomas Thompson the brother-in-law of Vidal, the commandant of the post of Concordia? State any thing you know of advantage to the defendant, as fully as if interrogated thereto.

STACY & SPARROW,
Attorney for Defendant.

Filed 7th May, 1842. W. T. PROUD, *Clerk.*

Commission.

THE STATE OF LOUISIANA,
Ninth district court, parish of Concordia:

To the honorable the parish judge of the parish of Catahoula, State of Louisiana, or to any justice of the peace of said parish.

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you George W. Lovelace, a resident of the parish of Catahoula, and him diligently examine on his oath or affirmation, touch-

ing his knowledge in a certain matter of controversy, now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia aforesaid, in a suit styled as in the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendants; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send enclosed under your hand and seal, directed to the clerk of the said court, at the town of Vidalia, on or before the fourth Monday in May, A. D. 1842, together with this commission.

[SEAL.] Witness the honorable Thomas Curry, judge of said court, this 9th day of May, A. D. 1843.

W. T. PROUD, *Clerk of said Court*.

Deposition A A A.

STATE OF LOUISIANA, *Parish of Catahoula:*

By virtue of a commission to me directed from the ninth judicial district court for the parish of Concordia, to take the testimony of George W. Lovelace, in a controversy pending in said court, wherein Samuel Davis is plaintiff, and the Police Court of the parish of Concordia defendants, and in compliance with the requisitions of said commission, I, Samuel P. Stone, an acting justice of the peace of the parish of Catahoula, caused the said George W. Lovelace to come before me on the 26th day of May, A. D. 1842, to be examined on oath, touching the matter in controversy; and before proceeding to take his testimony, I administered an oath to him to make true answers to the interrogatories propounded to him in the above entitled suit. He then made the following answers to said interrogatories:

1st Answer. I never resided in the parish of Concordia, nor never there, than where I now live. My first acquaintance in the parish of Concordia was in the year 1801, as I was passing from the post of Rapides to Natchez. I was then seventeen yea s old.

2d Answer. It was in the year 1801, and was kept by Thomas Thompson.

3d [Answer.] My first knowledge of a road running from Natchez to Cocodra was in the month of July, 1801, and found a road cut from the muddy or Boggy bayou to Thompson's; said road was made by order of Vidal, as I understood.

4th Answer. It was the only road I knew running across from the post of Concordia to the post of Rapides. I do not know by what name the road was known by, but I know that it was used by the public in hauling. I always heard it called the Vidal road at Rapide.

5th Answer. I did. My first acquaintance was five or six years previous to 1801. I have no knowledge. I do not know by whom the road was made, or any road between these points.

6th Answer. It was dense cane brake unto the open swamps, and was thinly timbered all the way.

7th Answer. It was. It was used by foot and horse, and might have been used by wagons; it was a very well cut out road.

8th Answer. There was a bridge over Boggy bayou; there was no other bayou between Boggy bayou and the river Mississippi, except the bayou Cocodra to my knowledge.

Answers to cross interrogatories.

1st Answer. No.

2d [Answer.] It crossed the bayou Cocodra at the place where Lee afterwards lived; the road run on the margin of some lake, but not Concordia lake. The road started at Thompson's house, and run to Boggy bayou, and no further at that time; and there was no other road running across there that I know of.

3d. Answer. I do not know; neither do I know who cut the road out. The trees, logs, brush, and cane was cleared off. I do not know. A cart could have passed conveniently. I do not know. A pretty good road through a swamp. The Boggy bayou was bridged, but as to causeways, I do not recollect any thing about it. I do not know by whom done.

4th Answer. I knew it had been cut, but how wide I cannot say, but it's my impression that a cart could pass. Just answered. I passed in the year 1803, and found a pretty good road all the way *all the way* to Cadey, or the place now called Trinity. I do not know by whom the road was cut out, but it went by the name of the Vidal road. It run from Thompson's on the Mississippi, to Caddy's at the mouth of Little river.

5th. Answered. I think he was. I know nothing else.

G. W. LOVELACE.

I certify that the foregoing answers are the true answers made to the interrogatories propounded in the above entitled, which was reduced to writing by me, and was signed in my presence.

S. P. STONE, *Jus. peace.*

Filed 28th May, 1842.

W. T. PROUD, *Clerk.*

Interrogatories to John Perkins.

"B B B."

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

Ninth district court, parish of Concordia.

Interrogatories to be propounded to John Perkins, residing in the parish of Madison, a witness for the plaintiff, whose answers, to be taken under commission, will be read in evidence on the trial of this cause.

1st. Did you or not at one time reside in the parish of Concordia, at or near the town now called Vidalia, formerly known as the post of Concordia, opposite the city of Natchez, in the State of Mississippi? If so, at what time did you reside there, or in what year did you first

become acquainted with that section of country, and what was then your age?

2d. When did you first know a ferry to be kept at that point across the river Mississippi, and by whom was it kept?

3d. Have you any knowledge of a road having been made from the Mississippi river at that point to the bayou Cocodia or Crocodile? In what year have you a knowledge of a road between the points first named, and by whom was said road made?

4th. Was there or not a road made and cut out from the post of Concordia to the said bayou Cocodia in the year 1801, or 1802, which went by the name of Thompson's road; and was it or not a road used by the public in travelling to and from those points?

5th. Did you know Thomas Thompson; at what time did your acquaintance with him first commence? Have you any knowledge of his having made the aforesaid road, or any other road between said points, and at what time? Please state fully all you know on the subject.

6th. What description of country did the aforesaid road run through; was the country lightly and thinly timbered, or was it a dense cane brake, with heavy timber?

7th. Was or was not the said road a sufficient one to accommodate the line of travel at that time, and was it not used by horse, foot, and wagon passengers?

8th. Please state any facts within your knowledge material to the plaintiff as fully and particularly as if interrogated thereto.

R. N. & A. N. OGDEN,
Atty's for plaintiff.

Cross interrogatories.

1st. Was or was not the tract of land adjacent to the town of Vidalia about the year 1800, or previous to that time, in the possession of, and occupied by, Job Routh; and while so possessed and occupied, did he not keep a ferry across the river Mississippi from a point nearly opposite Natchez; and was or was not said ferry kept and held under an exclusive grant or permission from the Spanish authorities?

2d. Do you know that, previous to the 19th February, 1802, a road had been cut out and made from the then post of Concordia to the bayou Cocodia? If so, what was the width of that road? Was it or not cut out, and the timber and cane all cut off and cleared away, to the width of 30 or forty feet—that is, was there a road cleared to that width at that time, or were the trees and cane all left standing, and was there during that time any thing more than a foot path, the direction of which was shewn by marked trees?

3d Was there a road extending the whole distance between those points (the post of Concordia and the bayou Cocodia) made and cleared ten feet wide, either at the time above spoken of, or for five years afterwards; and was there at that time any road not running parallel with the Mississippi that was made and cleared of all the timber and cane to that width? If so, where was that road?

1580.

4th. If Thompson ever pretended to make a road, was it not afterwards called Thompson's "trace," and did it not consist simply of a foot and horse path, and nothing more, pointed out by blazed trees; and if he made any road, did he, in making said road, cut and clear away the timber, bushes, and cane, and logs, or either of them, to the width of forty, thirty, twenty, or even ten, feet? What was the width of said road within which every thing was entirely cleared and cut away?

5th. Under this cross interrogatory state every thing you may know of advantage to the defendants. STACY & SPARROW.

Commission.

STATE OF LOUISIANA,
Ninth district court, parish of Concordia:

To any judge or justice of the peace in and for the parish of Concordia, greeting:

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents vested with full power and authority, to cause to come before you John Perkins, of the parish of Madison, State of Louisiana, and him diligently examine on his oath or affirmation, touching his knowledge, in a certain matter of controversy now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia aforesaid, in a suit styled as on the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendant; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send enclosed, under your hand and seal, directed to the clerk of said court, in the town of Vidalia, on or before the fourth Monday in May next, 1842, together with this commission.

Witness the honorable Thomas Curry, judge of said court, this 30th day of March, A. D. 1842.

[SEAL.]

W. T. PROUD, *Clerk of said court.*

SAMUEL DAVIS
vs.
POLICE JURY of Concordia. } No. 536. Margin.

Deposition of John Perkins.

"B B B."

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia.

In the ninth district court, parish of Concordia:

The answers of John Perkins, of the parish of Madison, to the interrogatories and cross interrogatories hereto annexed.

To the 1st. Int. He did reside in the parish of Concordia, one mile below the town of Vidalia, from the fall of 1809 till the fall of 1815; crossed the river for the first time from Natchez, where he then resided, to the post of Concordia, in the summer of 1803, on a visit to Captain

Vidal, during the existence of the Spanish government; witness was then 22 years of age.

2d. A public ferry was kept on both sides of the Mississippi river in the begining of the year 1804; how long before that time he does not know; the ferry from the Louisiana side was then kept by the heirs of Middleton, as assignees of Vidal; the ferry from the Natchez side was kept about one hundred yards below its present position.

3d. There was a road called the Thompson road between the Thompson and Vidal tracts of land, below what is now called Vidalia, leading from the Mississippi river to Lake Concordia, towards the mouth of bayou Cocodra, coupled while opened with the ferry, at the new town of Vidalia; whether or not it extended to the Cocodra witness does not know; witness knew this road between the years 1805 and 1812; but knows not when it was made, nor by whom; but believes it to have been a road for public use.

4th. Witness does not know, as he was not then in the country.

5th. Witness never knew Thomas Thompson personally; and, for further answer to this interrogatory in regard to the road, refers to his answer to 3d interrogatory.

6th. The country was heavily timbered; there must, at one time, have been a crane break, but witness has no recollection of ever seeing any short of the bank of Lake Concordia.

7th. In those days, when witness first knew the country, the roads were more ways for horses and footmen than for any thing else, but occasionally the Thompson road was used for carts to Lake Concordia; and back; there were but few wagons, if any, at or about the post.

8th. While a member of the Police Jury of the parish of Concordia either as presiding officer or as member merely, does not recollect which, Judge Dunlap and his brother at two different times, separately, were engaged to investigate the *the* title of Captain Vidal to the ferry, and the land on which the police buildings are situated, with a view of claiming them for the parish; and they reported that the time had gone by when the Police Jury might have effected something.

To the cross interrogatories witness answers:

To the 1st. Witness was not in the country at the time mentioned.

2d. He answers as in the preceding cross interrogatory.

3d. Witness knew it more as a road leading out through a lane from the river, called Thompson's road, which, to the best of witnesses recollection was shut up after the opening of a road at Vidalia, leading directly back, under the authority of the Police Jury about 1810 or '12, perhaps sooner.

4th. In answer to this cross interrogatory, witness repeats that the Thompson road was made before he had any knowledge of it; and his preceding answers embrace all he knows on the subject.

5th. He recollects nothing more than is already stated.

JOHN PERKINS.

Sworn to and subscribed this 4th day of A. D. 1842, before me.

W. T. PROUD, *Justice of the Peace.*

1581.

STATE OF LOUISANA,
Parish of Concordia.

Be it known, that by virtue of a commission hereto annexed, from the ninth district court of the State of Louisiana, holden in and for the parish of Concordia, directed to any judge or justice of the peace in and for said parish, in a certain suit pending in said court, styled as herein set first forth, I, William T. Proud, a justice of the peace for the parish aforesaid, duly commissioned and qualified, caused John Perkins, of the parish of Madison, a witness for plaintiff in said cause, to appear before me, and having duly sworn the said witness to declare the truth of the questions put to him in said cause, did reduce to writing the answers of said witness to the interrogatories, and cross interrogatories, accompanying said commission, in the presence of said witness, and as the same was by him delivered, and caused the said witness to sign his said answers in my presence, which are contained in the foregoing pages of writing.

In testimony whereof I have drawn and signed this certificate *this certificate*, in the parish aforesaid, this 4th day of April, A. D. 1842.

W. T. PROUD, *Justice of the Peace*.

Opened and filed 12th April, 1842.

W. T. PROUD, *Clerk*.

Interrogatories to General Joseph Walker

"C C C."

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

District court, parish of Concordia.

Interrogatories to be propounded to General Joseph Walker, a witness for the plaintiff, whose answers, to be taken under commission, will be read in evidence on the trial of this cause; said witness residing in the parish of Rapides:

1st. Did you not at one time reside in the parish of Concordia, at or near the town now called Vidalia, former known as the post of Concordia, opposite to the city of Natchez, in the State of Mississippi; if so, what time did you reside there, or in what year did you first become acquainted with that section of country, and what was then your age?

2d. When did you first know a ferry to be kept at that point across the river Mississippi, and by whom was it kept?

3d. Have you any knowledge of a road having been made from the river Mississippi at that point to the bayou Cocodra or Crocodile; in what year have you knowledge of a road between those points first named, and by whom was said road made?

4th. Was there or not a road made and cut out from the post of Concordia to the bayou Cocodra, in the year 1801 or 1802, which went by

the name of Thompson's road; and was it not a road used by the public in travelling to and from those points; did you know Thomas Thompson; at what time did your acquaintance with him first commence; have you any knowledge of his having made the aforesaid road, or any other road between those points, and at what time? Please state fully all you know on that subject.

6th. What description of country did the aforesaid road pass through? Was the country lightly and thinly timbered, or was it a dense canebrake, with heavy timber?

7th. Was or was not said road a sufficient one to accommodate the line of travel at that time; and was it not used by horse, foot, and wagon passengers? Please state any facts within your knowledge, material to plaintiff, as fully and particularly as if interrogated thereto.

R. N. & A. N. OGDEN,
Plff's attorneys.

Cross interrogatories.

1st Was not the tract of land adjacent to the present town of Vidalia, about the year 1800, or previous to that time, in the possession of, and occupied by, Job Routh; and while so possessed and occupied, did he not keep a ferry across the river Mississippi, from a point nearly opposite Natchez; and was or was not said ferry kept and held under an exclusive grant or permission from the Spanish authorities?

2d. Do you know that, previous to the 19th February, 1802, a road had been cut out and made from the then post of Concordia to the Bayou Cocodia? If so, what was the width of that road? Was it or not cut out, and the timber and cane all cut off and cleared away, to the width of thirty or forty feet; that is, was there a road cleared to that width at that time, or were the trees and cane all left standing; and was there, during that time, any thing more than a foot path, the direction of which was shown by marked trees?

3d. Was there a road extending the whole distance between those points, (the post of Concordia and the Bayou Cocodia,) made and cleared ten feet wide, either by the time above spoken of, or five years afterwards; and was there during that time any road, not running *running* parallel with the Mississippi, that was made and cleared of all the timber, and that to that width? If so, where was the road?

4th. If Thompson ever pretended to make a road, was it not afterwards called Thompson's "Trace," and did it not consist simply of a foot and horse path, and nothing more, pointed out by blazed trees; and if he made any road, did he, in making said road, cut and clear away the timber, and cane, and logs, or either of them, to the width of forty, thirty, twenty, or even ten feet? What was the width of said road, within which every thing was entirely cut and cleared away?

5th. Under this cross interrogatory, state every thing you may know of advantage to defendants.

STACY & SPARROW,
Attys. for defendant.

1582.

Commission.

STATE OF LOUISIANA,
Ninth district court, parish of Concordia:

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

To the parish judge of the parish of Rapides, or any justice of the peace in said parish, greeting:

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you General Joseph Walker, a witness for plaintiff, residing in said parish of Rapides, and him diligently examine, on his oath or affirmation, touching his knowledge in a certain matter of controversy now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia, in a suit styled as on the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia is defendant; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send enclosed, under your hand and seal, directed to the clerk of the said court, in the town of Vidalia, on or before the fourth Monday in May next, A. D. 1842, together with this commission.

Witness the honorable Thomas Curry, judge of said court, this 1st [SEAL.] day of April, 1842.

W. T. PROUD,
Clerk of said court.

Deposition of General Joseph Walker.

"C C C."

STATE OF LOUISIANA, *parish of Rapides:*

Be it remembered, that, on this 28th day of April, A. D. 1842, I, Edwin C. Leckie, an acting justice of the peace in and for the parish and State aforesaid, by virtue of a commission directed to the parish judge, or any justice of the peace in and for the parish and State aforesaid, caused to come before me at my office, in the town of Alexandria, General Joseph Walker, a witness on the part of the plaintiff, in a certain matter of controversy pending in the ninth district court, parish of Concordia, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendant; and after having sworn the said witness, according to law, to answer certain interrogatories propounded to him in the said case, proceeded to reduce the same to writing, in the witnesses own words as near as possible.

To the 1st. Answers that he was in Concordia in 1801, 1802, and 1803, frequently, and that, from 1804 to 1817, he resided there altogether, about three miles below what is now called Vidalia, formerly called the post of Concordia, opposite the city of Natchez; witness was then about 15 or 16 years of age.

2d. That a ferry was kept there in 1803 or 1804, by Thomas Thompson.

3d. That he recollects that, in the fall of 1802, there was a road cut from the post of Concordia to the Bayou Cocodia, and which crosses the Cocodia at the place which was afterwards called Lee's crossing, and running to Cady and Elrod's ferry on Black river; witness is not positive, but, as well as he recollects, it was cut by the said Thomas Thompson.

4th. Witness does not recollect whether it was called the Thompson road or not, but it was used by the public in travelling to and from those points. That the first part of this interrogatory is answered in his answer to the third.

5th. That he became acquainted with Thomas Thompson some fifty years ago, he believes; that Thompson made said road; that witness has no knowledge of his making any other road in that direction.

6th. That the road passed through some cane land, and open woods back of the cane; that the road passed through a cane ridge just below Vidalia, and afterwards through the open woods, occasionally some little cane.

7th. That it was a road sufficient for the line of travel at the time; no person hardly ever travelled it but on foot or horseback.

8th. Witness says he has stated what he recollects on the subject; that, in his answer to interrogatory fourth, witness states "that said road was cut in the fall of 1802;" of which fact witness has positive recollection.

Cross interrogatories.

1st. Witness answers, that he has no recollection of the facts contained in this interrogatory.

2d. That he has a recollection of a road being cut in the fall of 1802.

3d. That, in the winter of 1803, or spring of 1804, there was a road cut from Vidalia down the cane ridge, going down the Mississippi to what was called Carter's old place, on the little lake, about four and a half miles below the post of Concordia; that was cleared of all cane and small timber, and cut about twenty feet wide; this road was cut by witness, said Thompson, and other settlers.

4th. That witness has already stated, in his answers in chief, that it was a road used by horse and foot passengers; that the cane was cut, some small trees, and cypress knees, and the trees blazed.

5th. He answeis, that he does not recollect any thing more than what is already stated.

JOSEPH WALKER.

Sworn to and subscribed, at Alexandria, this 28th day of April, A. D. 1842.

EDWIN C. LECKIE,
Jus. peace.

I certify the foregoing to be the true answers of Gen. Joseph Walker, to the interrogatories propounded in the case mentioned in the pream-

ble; that the answers were reduced to writing by me, and signed by the witness in my presence, and that the erasures and interlineations [were] made before signing.

In testimony whereof I have hereunto subscribed my official signature, at Alexandria, on the day and year first above written.

EDW. C. LECKIE, *Jus. peace.*

Opened and filed, 21st May, 1842.

W. T. PROUD, *Clerk.*

Interrogatories to Policarp Lamothe.

"D D D."

Ninth district court, parish of Concordia:

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

Interrogatories to be propounded to Polycarpe Lamothe and Francis Henderson, residents of the parish of Rapides, witnesses for the plaintiff, whose answers, to be taken under commission, will be read in evidence on the trial of this cause.

1st. Did you or not at one time reside in the parish of Concordia, at or near the town now called Vidalia, formerly known as the post of Concordia, opposite the city of Natchez, in the State of Mississippi? If so, at what time did you reside there, or in what year did you first become acquainted with that section of country; and what was then your age?

2d. When did you first know a ferry to be kept at that point, across the river Mississippi, and by whom was it kept?

3d. Have you any knowledge of a road having been made, from the river Mississippi at that point, to the Bayou Cocodia or Crocodile? In what year have you knowledge of a road between those points being first made, and by whom was said road made?

4th. Was there not a road made and cut out, from the post of Concordia to the said Bayou Cocodia, in the year 1801 or 1802, which went by the name of the Thompson road; and was it or not a road used by the public in travelling to and from those points?

5th. Did you know Thomas Thompson? At what time did your acquaintance with him first commence? Have you any knowledge of his having made the aforesaid road, or any other road between those points, and at what time? Please state fully all you know on the subject.

6th. What description of country did the aforesaid road pass through? Was the country lightly and thinly timbered, or was it a dense canebrake, with heavy timber?

7th. Was or was not the said road a sufficient one to accommodate the line of travel at that time, and was it not used by foot, horse, and wagon passengers? Please state any facts within your knowledge material to the plaintiff, as fully and particularly as if interrogated thereto.

SAMUEL DAVIS, *in proper person.*

Cross interrogatories.

1st. Are you related to the plaintiff in this suit, or interested in this suit? If you answer that a road was made from the post of Concordia to the Cocodra, what was the route of that road? Did it run along the margin of Lake Concordia, or did it run across to Trinity, from a point on the river Mississippi several miles below the post of Concordia? And was there or not a road, or trace, on both these routes across to the Cocodra? If so, which of the roads, or traces, was the one said to have been made by Thompson?

2d. Of what width was the road said to have been cut by Thompson in 1801 and 1802? That is, to what width were all the trees, logs, bushes, cane, and all obstructions, cut, cleared away, and removed? Was it so cut and cleared thirty or forty feet wide; if not, was it so cut and cleared twenty, or even ten feet wide? Please give definite and positive answers to these questions.

3d. Was there or not to your knowledge, previous to the first of March, 1802, from the post of Concordia to the Bayou Cocodra, a road cut and cleared thirty feet wide all the way, or any part of the way? If not, to what width was it cut and cleared; the width of thirty feet previous to the year 1810? If so, by whom was it so cut and cleared?

4th. Was or was not Thomas Thompson the brother-in-law of Vidal, the commandant of the post of Concordia? State any thing you may know of advantage to the defendants, as fully as if interrogated thereto.

STACY & SPARROW,
Atts. for defts.

Commissions.

STATE OF LOUISIANA,
Ninth district court, parish of Concordia:

To any judge or justice of the peace in and for the parish of Rapides, State of Louisiana, greeting:

Know ye, that, reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you Polycarpe La Mothe and Francis Henderson, residents of said parish of Rapides, and them diligently examine on their oath or affirmation, touching their knowledge in a certain matter of controversy now pending in the ninth district court of the State of Louisiana, in and for the parish Concordia aforesaid, in a suit, styled as in the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the Parish of Concordia defendant; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send enclosed under your hand and seal, directed to the clerk of the said court, in the town of Vidalia, on or before the fourth Monday in May next, A. D. 1842, together with this commission.

Samuel Davis vs. The Police Jury of the Parish of Concordia. No. 536.

Witness the honorable Thomas Curry, judge of said court, this 12th day of April, A. D. 1842.

[SEAL.]

W. T. PROUD,
Clerk of said court.

Deposition of Policarp Lamothe.

"D D D."

Answers of Policarp Lamothe to the interrogatories propounded, and hereto annexed, in pursuance of the annexed commission.

Answer to 1st. Witness was in the parish of Concordia in the year 1801, or the year 1802, for two or three months, trading in cattle. At the time witness was in Concordia there was a ferry on the Mississippi opposite Natchez, extending from the post across the river to Natchez. Gen. Vidal was commandant of the post of Concordia at that time, and the soldiers stationed there assisted in passing the cattle over *the cattle over* the ferry; witness don't know who kept the ferry; witness was about twenty years old at that time.

Answer to 2d. Witness crossed Black river at the junction of Little river, at a place called Cadet Hebrard's ferry, from which point there was a road all the way to the Mississippi, after which the road extended up the bank of the river to the ferry landing opposite Natchez, a distance of three or four miles. There was a ferry kept at that point in the year 1801 or 1802, but witness does not know by whom.

To the 3d. Witness knows there was a road from the ferry landing at the post of Concordia to the Cocodra; it was in the year 1801 or 1802 when witness first saw the road.

To the 4th. Witness don't know the name of the road, or by whom it was cut out; the road was used by the public in travelling from those points; don't know whether it was used for carts or wagons, or not.

To the 5th. There was a man living at that post by the name of Thompson; witness had no particular acquaintance with him; he was a large man; saw him there in the year 1801 or 1802; don't know whether Thompson made the road or not.

To the 6th. There was a great deal of cane brake and heavy timber in the swamp, with palmetto.

To the 7th. The road seemed sufficient to accommodate the public at that time; it was used for travelling on horseback, as well as by footmen; don't know that it was used for wagons.

To the 8th. Witness has stated all he knows material to plaintiff in his preceding answers.

Answers to cross interrogatories.

Answer to the 1st. Witness is not related to plaintiff, and has no interest in this suit. Witness knows only the road already described as running along the margin of the Mississippi three or four miles, and extending thence across to Cadet Hebrard's ferry, at the junction of Black and Little river; there might have been a road extending back to the Cocodra, from the ferry directly, but witness don't remember it. Witness don't know that Thompson made any road.

To the 2d. Witness has stated that he don't know that Thompson cut a road. The road was cut as witness has before described it in his answers; cannot describe it more particularly.

To the 3d. Witness has stated already all his knowledge upon matters contained in this interrogatory.

To the 4th. Witness don't know anything of the relation of Thompson to Vidal, and has stated all he knows in his preceding answers.

P. LAMOTHE.

STATE OF LOUISIANA, *Parish of Rapide:*

I certify hereby, that the foregoing are the answers of Polycarpe Lamothe, taken down by me in writing, to the interrogatories propounded by me, as they are connected in writing with the commission hereto annexed, having first sworn him according to law, and that he subscribed them in my presence.

In testimony whereof I have hereunto subscribed my name, this 21st day of May, 1842.

D. EVANS,
Justice of the peace in the parish of Rapides.

Answers of Francis Henderson to interrogatories taken in pursuance of the commission herewith annexed.

Answer to 1st. Witness lived nine miles above the post of Concordia, now called Vidalia, in the parish of Concordia; witness moved his family there in the year 1801, and continued to reside there to the year 1813; witness was acquainted with the country four or five years before he moved to it with his family; can't remember the particular year when his acquaintance with it first commenced; witness was about twenty years old at the time he became first acquainted with that section of country.

To 2d. Witness knows that there was a ferry there, and principally for crossing stock, by Job Routh and Jeremiah Routh, but thinks it was for their own private advantage. After that time Thomas Thompson kept a ferry there for the public accommodation, about the year witness moved with his family to Concordia. Thompson, with his family, lived then at the post of Concordia.

Answer to 3d. Witness knows there was a road from the ferry landing to the Cocodra, or Crocodile, and believes that Thompson cut out the road; thinks that he saw him cutting it out; witness often travelled on the road at that time; witness knows that the road was made prior to the year 1802.

Answer to 4th. There was a road there at that time used by the public, called Thompson's road.

Answer to 5th. Witness was acquainted with Thompson from his boyhood, and has stated his knowledge on the subject of this interrogatory in his preceding answers.

Answer to 6th. The country consisted at that time of a dense cane brake; it was also thickly timbered.

Answer to 7th. It was used by travellers on horse, and by foot travellers; it was wide enough for wagons, and occasionally used as a wagon road. Witness has no recollection, however, of seeing wagons on the road; only knows that they travelled on it from the impressions on the road.

Answer to 8th. Witness believes that he has stated all he knows upon the subject in his previous answers.

Cross interrogatories.

Answer 1st. Is not related to the plaintiff, nor interested in this suit. Witness knows of no road but the one cut by Thompson prior to the year 1802; afterwards, about the years 1804 and 1805, and from that time, there were other roads, but witness cannot define them. The road made by Thompson went directly through the woods to Cocodra lake, or bayou.

Ans. 2d. The road was passable for teams at that time, part, if not all the way; cannot say how wide particularly; it was sufficiently clear to admit of travel.

Ans. to 3d. Witness has stated what he knows of the matter in this interrogatory as fully as he can in his preceding answers.

Ans. to 4th. He was the brother-in-law of Vidal, the commandant of the post of Concordia; and further witness [knows] nothing material to defendant.

FRANCIS HENDERSON.

STATE OF LOUISIANA,
Parish of Rapides:

I certify that the foregoing answers of Francis Henderson were taken down in writing by me, to the interrogatories hereto annexed [and] propounded, and taken by me in pursuance of the annexed commission, having first sworn him according to law, and caused him to subscribe his name to his answers in my presence.

In testimony whereof I have hereunto subscribed my name, this 21st day of May, 1842.

D. EVANS, *J. P.*

Opened and filed 8th December, 1842.

THOS. EDWARDS, *Dy. Clerk.*

Interrogatories to C. Miller, &c.

"E E E."

Ninth district court, parish of Concordia.

SAMUEL DAVIS
vs.
THE POLICE JURY of the Parish of Concordia. } No. 536.

Interrogatories to be propounded to Christopher Miller, Peter Little, and others, of Adams county, in the State of Mississippi, to David B. Morgan, of the parish of St. Tamany, and Benjamin Kitchen, of the

parish of Rapides, State of Louisiana, to be by them answered, under oath, by virtue of a commission issued from the court aforesaid, whose answers will be used on behalf of the Police Jury upon trial of the above entitled suit.

Int. 1st. What is your age, and how long have you resided in, or have been acquainted in, that part of the country, now forming the States of Louisiana and Mississippi; and were you or not formerly acquainted with Joseph Vidal, the commandant of the post of Concordia, situate where the town of Vidalia now stands; and were you or not also acquainted with one Thomas Thompson, who at one time owned a tract of land below said post, and near it? If yes, at what time did your acquaintance with said persons commence, and during what years did it continue; were or were not said Vidal and Thompson brothers-in-law, or connected by marriage? If yes, what was that connection?

2nd. Were you not, during the years 1801 and 1802, acquainted with the routes which were travelled between the post of Concordia *to* the bayou Cocodra or Crocodile? If yes, please state what were those routes, and where did they run; and how many of them there were; were or were not each and all of those travelled routes mere bridle paths during those years; or was there any one or more of them, during those two years, roads, made, cut out, and cleared, thirty or forty feet wide?

3d. Was or was there not, during those years, any road from said post to the said bayou, cut out and cleared, or were they only bridle paths, indicated and traced out by blazes on trees?

4th. Did or did not Thomas Thompson, during the years 1801 or 1802, or any one else, either for him or for themselves, make a road thirty or forty feet wide from said post to said bayou? If such a road had been made, would you or not have known it?

5th. Was or was there not, during either of those years, a road cut from said post to said bayou, suitable even for carts or wagons?

6th. In what years, and by whom, was the road to Cocodra, by the way of Lake Concordia, first cut out as a cart or wagon road; in what year or years, and by whom, was such a road first cut out, from the river to Trinity?

7th. During the year 1801 was the Marquis Casa Calvo, governor general of the province of Louisiana, or did he act in the capacity of governor general during that year? If not, what office did he hold?

8th. Under this interrogatory please state particularly what was the condition of all the roads from said post of Concordia to the bayou Cocodra, during the years 1801, '2, '3, '4, and 1805; which of those years they were mere bridle ways; at what time or times, by whom, and at whose expense, they were cut out and cleared, suitable for carts and wagons, and every particular relating to them.

D. S. STACY, *Attorney*.

Cross interrogatories.

The plaintiff, by his counsel, excepts to the interrogatories propounded by the defendants to Christopher Miller, Peter Little, David

1586.

B. Morgan, and Benjamin Kitchen, on the ground that they are leading questions, suggesting to the witnesses the answers that are expected from them, and reserving their objections, propounds to said witnesses the following cross interrogatories:

1st. Did you know what were the upper and lower limits of what was called the "post of Concordia?"

2nd. Do you know where the Government-house stood at that time? If so, please designate the spot, and say if you know where the commandant of the post resided.

3d. Was not the country on the opposite side of the river from Natchez, for a considerable distance above and below the Government-house, generally known and considered as the "post of Concordia;" if it had anded and definite limits, how and by whom were those limits fixed; and you you able to say, from your own knowledge, that the upper line of the Thompson tract was below the lower limits of the post?

4th. Was not the country from the river at the post of Concordia to the bayou Cocodra or Crocodile, a thick cane brake?

5th. Was there not a road leading from the river at the post of Concordia to the said bayou Cocodra, which was cut through the cane brake, and which was called and known as the "Thompson road;" was it not a public road; and was it not inspected and received by the commandant of the post, as a road made by Thompson under contract with the Spanish Government?

6th. Were not all the public roads in that part of the country you have referred to very indifferent ones; were there not very few persons then living in that section of the country?

7th. Did not Thomas Thompson, for some time prior to 1803, exercise publicly the right of ferry across the river Mississippi at a point nearly opposite the city of Natchez; and was it not generally known and understood that this right of ferry had *be* granted to said Thompson by the Spanish government, for the consideration of his making the road to Cocodra, which was called Thompson's road?

8th. Did you ever know of any opposition, by the Spanish government, to the exercise of this right by Thompson; or, after him, by Vidal?

9th. If you state you were acquainted with the routes travelled between the post of Concordia and the bayou Cocodra, during the years 1801 and 1802, please state how often you travelled these routes during that time, and how often you travelled them after that time.

10th. Please state any thing you know material to the plaintiff, as fully and particularly as if interrogated thereto.

R. N. & A. N. OGDEN,
Attys. for plaintiff.

Commission.

STATE OF LOUISIANA, *Parish of Concordia:*

Parish of Concordia, to the parish judge, or any justice of the peace of the parish of St. Tamany, or to any assistant judge of the city court of the city of New Orleans, greeting:

Know ye, that, reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated, appointed, and, by these presents, invested with full power and authority to cause to come before you, or either of you, David B. Morgan, of the parish of St. Tamany, State of Louisiana, and him diligently examine, on his oath or affirmation, touching his knowledge in a certain matter of controversy, now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia aforesaid, in a suit, styled as on the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendant; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send enclosed, under your hand and seal, directed to the clerk of the said court, in the town of Vidalia, on or before the first Monday in June next, 1842, together with this commission.

Samuel Davis vs. The Police Jury of the Parish of Concordia. } No. 536.

Witness the honorable Thomas Curry, judge of said court, this 18th day of February, A. D. 1842.

[SEAL.]

W. T. PROUD,
Clerk of said court.

Deposition of David B. Morgan.

"E E E."

SAMUEL DAVIS
vs.
THE POLICE JURY of the Parish of Concordia. } No. 536.

THE STATE OF LOUISIANA,
Parish of St. Tamany, justice court, 4th ward:

I, the undersigned, an acting justice of the peace in and for the parish of St. Tamany, in virtue of a commission issued by the honorable the ninth judicial district court of the State of Louisiana, in and for the parish of Concordia, in the above entitled suit, under date of 18th February, A. D. 1842, did receive and commit to writing the following answers of David B. Morgan, of this parish and State, to the interrogatories then propounded.

Answer to 1st. My age is sixty-nine years. I have been acquainted with that part of the country, now forming the States of Louisiana and Mississippi, since 1801. I was intimately acquainted with Joseph Vidal, commandant of the "post of Concordia," situated where the town of Vidalia now stands. I was acquainted with Thomas Thompson, who, at one time, owned a tract of land near said "post;" but whether above or below, I do not now recollect. My acquaintance commenced with Vidal and Thompson early in the spring of 1802, which continued with Vidal until a short time previous to his death. I understood that Vidal and Thompson were brothers-in-law; do not know the fact. Mrs. Vidal was dead when my acquaintance commenced with Vidal. I do

not recollect how long the acquaintance continued with Thos. Thompson, but during his residence about that place.

Int. 2d. I was acquainted with the road, leading from the post of Concordia to Lake Concordia, in the summer of 1802; and I was not acquainted with any other at that period. It was a road cut through the woods and cane, and travelled by carts and wagons; but was not so much as thirty or forty feet wide.

Int. 3d. I knew of no other road from the post to the bayou, during 1801 and 1802, but the one mentioned in answer to interrogatory 2d.

Int. 4th. I do not know that Thomas Thompson, or any one else for him or themselves, did, in 1801 or 1802, make a road from said post to said Bayou Cocodra, 30 or 40 feet wide; never having travelled further than Lake Concordia previous to 1805, cannot tell what was done there in 1802.

Int. 5th. There was a road cut from the "post of Concordia," in 1802, direct to Lake Concordia, for wagons and carts.

Int. 6th. I do not know.

Int. 7th. I do not know.

8th. In 1802, I travelled the road from the post of Concordia to Lake Concordia, to a place improved by a man named Texada; but not further, until the close of 1805. There was then a road from the post of Concordia to Bayou Cocodra, which carts and wagons could have travelled. When it was cut, or by whom, I do not know.

Cross interrogatories.

Int. 1st. I know where the post of Concordia was; but do not know positively where the upper and lower limits were.

2d. I do know where the Government-house stood, in 1802, in which the commandant resided, which was nearly opposite, and, I believe, a little below, the old fort of Natchez.

3d. The post of Concordia, as I understood, extended about 20 acres above, and about 15 acres below, the house of the commandant. I do not know who fixed the limits; nor do I know the limits of the Thompson tract.

4th. The country from the river, at the post of Concordia to the Bayou Cocodra, was a thick cane brake.

5th. There was a road leading from the post of Concordia to Lake Concordia, in 1802, known as the Thompson road; it was a public road; but whether made by contract with the Spanish government, and received as such, I do not know.

6th. All the roads in Concordia, in 1802, were very indifferent; very few persons then residing in that section of country.

7th. Thomas Thompson did, previously to 1803, exercise publicly the right of ferry across the Mississippi nearly opposite Natchez; and it was generally known and understood that said right had been granted to said Thompson by the Spanish government, in consideration of his having made a road.

8th. I never knew of any opposition, by the Spanish government, or by Vidal, to the exercise of Thompson's right of ferry.

9th. I was not acquainted with any parts of the routes, from the post of Concordia to the Bayou Cocodra, previous to 1803, but that part which lead from the post of Concordia to Lake Concordia.

10th. I do not recollect any thing material to the plaintiff, more than I have stated in the foregoing answers.

DAVID B. MORGAN.

Answered, subscribed, and sworn to before me, at or near the town of Madisonville, State and parish aforesaid.

GEO. W. GILBERT, *J. P.*

Opened and filed 30th March, A. D. 1842.

W. T. PROUD, *Clerk.*

Interrogatories to L. Bouligney.

"F F F."

SAMUEL DAVIS
vs.
THE POLICE JURY of the Parish of Concordia. } No. 536.

DISTRICT COURT, *parish of Concordia:*

Interrogatories to be propounded to L. Bouligney, a witness for plaintiff, residing in the parish of Jefferson.

1st. Were you living in Louisiana in the year 1799, when the country belonged to the Spanish government? And, if so, how long have you resided in the country, and what is your age at present?

2d. Do you know whether the Marquis de Casa Calvo ever acted as governor in the said province of Louisiana during the time it belonged to the Spanish government? If you answer affirmatively, please state at what time he commenced exercising the functions of governor, how long he continued in office, and at what time he ceased to act as governor, and who succeeded him in that office. Please state fully all you know on the subject.

3d. If you know any other facts, respecting which you have not been interrogated, material to show what powers and authority the said Marquis de Casa Calvo exercised under the Spanish government, please now state them fully and particularly.

R. N. & A. N. OGDEN,
Attorney for P.

Cross interrogatories.

Int. 1st. Was it or was it not notorious that the Marquis de Salcedo was, previous to the year 1800, governor general of the province of Louisiana, and that he retained that office up to the time of the cession of the province to the United States in 1803?

Int. 2d. If the Marquis de Casa Calvo assumed to act as governor

general in 1801, have you any actual personal knowledge that he held an appointment from the King of Spain; and have you any means of knowing, or do you know anything more, than he acted in some things in that capacity? Is not all your knowledge confined to the fact that he assumed to act in the capacity of governor, and to the presumptions arising from his acting in that capacity?

STACY & SPARROW,
Attys. for defendants.

Commission.

STATE OF LOUISIANA,

Ninth district court, parish of Concordia.

To the honorable the parish judge of Jefferson, State of Louisiana, or any justice of the peace in said parish, greeting:

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority to cause to come before you L. Bouligney, residing in the parish of Jefferson, and him diligently examine on his oath or affirmation, touching his knowledge in a certain matter of controversy, now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia aforesaid, in a suit styled as on the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendants; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send enclosed under your hand and seal, directed to the clerk of said court in the town of Vidalia, on or before the fifth Monday in May next, A. D. 1842, together with this commission.

Samuel Davis vs. The Police Jury of the Parish of Concordia. } No. 536, margin.

Witness the honorable Thomas Curry, judge of said court, this 7th day of May, A. D. 1842.

[SEAL.] W. T. PROUD, *Clerk of said court.*

Deposition of L. Bouligney.

"F F F."

STATE OF LOUISIANA,

City court of the city of Lafayette.

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

Be it known, that on this 16th day of May, in the year of our Lord one thousand eight hundred and forty-two, I, Benjamin C. Elliott, judge of the city court of the city of Fayette, by virtue of the annexed commission, did proceed to take the testimony of L. Bouligney, or his answers to the interrogatories filed, and after having duly sworn him according to law, I reduced his testimony or answers to writing, as directed to me by him, to be read on the trial of this cause before the honorable the ninth district court.

Answers of L. Bouligney to the interrogatories filed.

1st int. I was living in Louisiana in the year 1799; the country, at that time, belonged to the Spanish government; I was born in Louisiana, and have lived here all my life; my age, at present, is sixty-one years.

2d int. Yes, the Marquis de Casa Calvo arrived here as governor "ad interim," 1st October, 1799, and remained and acted as governor, until June or July, 1801, at which time he was replaced by Don Manuel de Salcedo.

3d int. At the death of Governor Don Manuel Gayoso de Lemos, the last day of July, 1799, the captain general of the Island of Cuba sent here, as governor "ad interim," the Marquis de Casa Calvo, to replace the deceased governor, until the arrival of him who should be commissioned by the King of Spain. The Marquis de Casa Calvo was invested during the time with all the powers and authority, civil and military, of one named and commissioned by the King.

Cross interrogatories.

Answer to 1st. The Marquis de Salcedo was not governor general previous to the year 1800; the Marquis de Casa Calvo was sent here by the captain general, (Louisiana being, at that time, a dependency of the said captain general,) to fill the place of governor "ad interim," with the same powers, civil and military, of one commissioned by the King of Spain; he arrived here 1st October, 1799, remained as governor until June or July, 1801, when he was replaced by Governor Salcedo.

Answer to 2d. As governor ad interim he had all the powers, civil and military, attached to the office of governor; being myself, at that time, about twenty years of age, and being an officer of the regiment of infantry, I have perfect knowledge of these facts.

L. BOULIGNEY.

Sworn to and subscribed before me, as set forth, 16th May, 1842.

B. C. ELLIOT, *Judge city court of the city of Lafayette.*

I, Benjamin C. Elliot, judge of the city court of the city of Lafayette, do certify, that the above and foregoing pages contains the whole of the testimony or answers of L. Bouligney to the interrogatories, and reduced by me to writing, as directed to me by him, after having duly sworn him as the law directs; said testimony to be read on the trial of the suit No. 536, docket of the district court of the ninth district, Louisiana, now pending between Samuel Davis, plaintiff, and Police Jury of the parish of Concordia, defendants. Thus done and closed, at the city of Lafayette, this 16th day of May, in the year of our Lord eighteen hundred and forty-two, and the sixty-sixth year of the independence of the United States of America.

B. C. ELLIOT, *Judge*.

Opened and filed in court, 26th May, 1842.

W. T. PROUD, *Clerk*.

13-89.
65

Interrogatories to Richard Relf.

"G G G."

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

Ninth district court, parish of Concordia.

Interrogatories to be propounded to Richard Relf, residing in the city of New Orleans, State of Louisiana, whose answers, taken under commission before O. P. Jackson, or any other associate judge of the city court of New Orleans, will be read in evidence on the trial of this cause.

1st. Were you or not a resident of New Orleans in the years 1800 and 1801, or at that time residing in Louisiana, and what was then your age?

2d. During the years 1800 and 1801 was or was not the Marquis de Casa Calvo, the Spanish governor in the province, embracing the post of Concordia?

3d. Please state whether to your knowledge he acted in the capacity of governor under the Spanish government; at what time he commenced exercising the functions of governor, and how long he continued to do so. And please state the means of your knowledge; was his authority as governor recognised and submitted to by the inhabitants of the province; please state all you know on the subject, as to what the authority and office of the said Casa Calvo was under the Spanish government, during the years 1800 and 1801, and particularly what his powers and authority were on the 19th February, 1801, and whether at this last mentioned period he publicly exercised the functions of governor under the Spanish government.

SAMUEL DAVIS.

Cross interrogatories.

Cross interrogatories to be propounded to Richard Relf, witness for plaintiff.

Int. 1st. Was it or was it not notorious that the Marquis de Salcedo was, previous to the year 1800, Governor General of the province of Louisiana, and that he retained that office up to the time of the cession of that [province] to the United States in 1803?

Int. 2d. If the Marquis de Casa Calvo assumed to act as Governor General in 1801, have you any actual personal knowledge that he held that appointment from the King of Spain; and have you any means of knowing, and do you know, any thing more than that he acted in that capacity in some things?

Int. 3d. Are you or not in any way interested in the result of this suit?

Int. 4th. You will please state any thing else you may know of advantage to the defendants, as fully and particularly as if specially interrogated thereto.

STACY & SPARROW, *Att'ys for Def'ts.*

[REC. CL, D. T. 1847.]—9

Commission.

STATE OF LOUISIANA,
Parish of Concordia, ninth district court:

To the honorable O. P. Jackson, asssociate judge, or any other associate judge, of the city court of New Orleans, Louisiana, greeting:

SAMUEL DAVIS
vs. } No. 536. Margin.
THE POLICE JURY of the parish of Concordia.

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you Richard Relf, residing in the city of New Orlean State of Louisiana, and him diligently examine, on his oath or affirmation, touching his knowledge in a certain matter of controversy now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia aforesaid, in a suit styled as on the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendant; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send, enclosed under your hand and seal, directed to the clerk of said court, in the town of Vidalia, on or before the last Monday in May, instant, A. D. 1842, together with this commission.

Witness the honorable Thomas Curry, judge of said court, this 15th day of May, A. D. 1842.

[SEAL.] W. T. PROUD, *Clerk of said Court.*

Deposition of Richard Relf.

"G G G."

SAMUEL DAVIS
vs. } No. 536.
THE POLICE JURY of the parish of Concordia.

Richard Relf, being duly sworn to give full and true answers to the interrogatories propounded to him, deposeth and saith, as follows:

To the 1st. He saith that he was a resident of the city of New Orleans in the years 1801 and 1802, and at the latter period was twenty-four years old.

To the 2d. He saith that, during the years 1800 and 1801, the Marquis de Casa Calvo was the Spanish Governor in the province, embracing the post of Concordia.

To the 3d. He saith that the Marquis de Casa Calvo, to his knowledge, acted in the capacity of governor ad interim under the Spanish Government, with, it was generally understood, all the powers of a fully commissioned governor, which were acquiesced [in] and submitted to by the inhabitants of the province. *Defendant* does not recollect the precise time of his arrival in Louisiana, nor when he left it, and cannot therefore speak positively as to the precise day of the 19th February,

1801, but knows that he exercised the functions of governor under the Spanish Government about that time.

To the first cross interrogatory. That, as stated in his preceding answers, the Marquis de Casa Calvo was governor general ad interim in 1800 and 1801, but was superseded in the Government by Governor Salcedo, at whose death he returned to Louisiana in the capacity of commissioner for the delivery of the province to the commissioners of the United States.

To the 2d. He saith that, if deponent recollects aright, the appointment of the Marquis de Casa Calvo was not derived from the King of Spain, but from the captain general of *Havana*, to whose jurisdiction the province of Louisiana belonged, but deponent knows that he acted in that capacity in all things appertaining to the province.

To the 3d. He saith that he is not in any way interested in the result of this suit.

To the 4th. He saith that he knows nothing further.

RICHARD RELF.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known, that, by virtue of the annexed commission, I have caused to come before me, at my office, 60 Royal street, on the 7th day of June, 1842, Richard Relf, a witness in a certain cause now pending in the district court, parish of Concordia, in which Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia are defendants; and the said witness was duly sworn by me to give full and true answers to the questions put to him in said cause; and his said deposition was reduced to writing by me, and subscribed by him in my presence.

In testimony whereof, I have hereunto subscribed my name, this 7th day of May, 1842. O. P. JACKSON, *Judge*.

Opened and filed, 9th June, 1842.

THOS. EDWARDS, *Deputy Clerk*.

Interrogatories to John McDonaugh.

"H H H."

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia.

District court, parish of Concordia.

Interrogatories to be propounded to John McDonaugh, a witness for plaintiff, residing in the city of New Orleans, whose answers, taken under commission, will be read in evidence on the trial of this cause.

1st. Were you or not a resident of the city of New Orleans in the years 1800 and 1801, or at that time residing in Louisiana; and what was then your age?

2d. During the year 1800 or 1801, was or was not the Marquis de Casa Calvo the Spanish governor in the province, embracing the post of Concordia?

3d. Please state whether, to your knowledge, he acted in the capacity of governor under the Spanish Government; at what time he commenced exercising the functions of governor, and how long he continued to do so. Was his authority as governor recognised and submitted to by the inhabitants of the province? Please state all you know on the subject, as to what authority and office of the said De Casa Calvo was, under the Spanish Government, during the years 1800 and 1801; and particularly about what his powers and authority were on the 19th February, 1801; and whether, at this last-mentioned period, he publicly exercised the functions of governor under the Spanish Government.

R. N. & A. N. OGDEN,
Att'ys for Plaintiff.

Cross interrogatories.

1st. Was it not notorious that the Marquis de Salcedo was, previous to the year 1800, governor general of the province of Louisiana, and that he retained that office up to the time of the cession of the province to the United States in 1803?

2d. If the [said] Casa Calvo assumed to act as governor general in 1801, have you any personal knowledge as to whether he held an appointment from the King of Spain; or have you any means of knowing, and do you know, any thing more than that he acted in that capacity? Is not all your knowledge confined to the fact that he assumed the capacity of governor, and acted as such, and to the presumptions resulting fom his acting in said capacity?

STACY & SPARROW, *Att'ys, for Def'ts.*

Commission.

STATE OF LOUISIANA,

Ninth district court, parish of Concordia:

To the honorable T. N. Morgan, associate judge of the city court of New Orleans, greeting:

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536. Margin.

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents vested with full power and authority, to cause to come before you John McDonaugh, a witness for plaintiff, residing in the city of New Orleans, and him diligently examine, on his oath or affirmation, touching his knowledge in a certain matter of controversy now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia aforesaid, in a suit styled as on the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia defendant; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send, enclosed under your hand and seal, directed to the clerk of said

court, in the town of Vidalia, on or before the fourth Monday in May, A. D. 1842, together with this commission.

Witness the honorable Thomas Curry, judge of said court, this 1st day of April, A. D. 1842.

[SEAL.] W. T. PROUD, *Clerk of said court.*

Deposition of John McDonaugh.

"H H H."

The deposition of John McDonough, a witness on the part of the plaintiff, in the case of Samuel Davis vs. the Police Jury of the parish of Concordia, now pending before the honorable 9th district court of the State of Louisiana, taken by virtue of the annexed commission, to me directed, before me, Thomas N. Morgan, associate judge of the city court of New Orleans.

John McDonaugh, being duly sworn, saith, to the

1st int. That he was residing in the city of New Orleans during the two years 1800 and 1801; his age in the year 1800 was twenty-one years.

To the 2d. The Marquis de Casa Calvo was governor of Louisiana in the year 1800, and continued to be governor until his departure, some time afterwards; but deponent is unable to state the time of his departure. He returned to this country in the year 1803, as a commissioner to deliver this country to France; deponent believes that his style of office was then governor.

To int. 3d. It is to deponent's knowledge that he did act in the capacity of governor, under the Spanish Government, in the year 1800 and 1801, but deponent does not know when he took possession of the government, as it was previous to deponent's arrival in Louisiana; his authority as governor was generally recognised by all the inhabitants of Louisiana, and it was understood that his powers were those with which all Spanish governors were charged with from his King. Deponent believes that, on the 19th day of February, 1801, Governor Casa Calvo continued to exercise the functions of governor of the province.

Cross examined.

To 1st cross int. Deponent saith, that Salcedo succeeded to or replaced Casa Calvo in the government of Louisiana, which took place, as well as deponent remembers, in the year 1801, but in what month deponent does not remember. When Salcedo took possession of the government he retained it up to the time of its delivery to the French Government, which took place in the year 1803.

2d. Deponent has no knowledge of his own as to whether Casa Calvo held an appointment from the King of Spain, evidence of such appointment being shown only to the higher officers of the government. Deponent is unable to say more than that he acted in the capacity of governor of the province; he acted as commander-in-chief of the army and navy. Deponent's knowledge is confined only to those facts from

which he, in common with all the inhabitants, derived the knowledge or belief that De Casa Calvo was governor.

JOHN McDONAUGH.

STATE OF LOUISIANA,
City of New Orleans:

I, Thomas N. Morgan, an associate judge of the city court of New Orleans, do hereby certify, that, on the 7th day of April, 1842, the witness, John McDonough, was by me duly sworn to declare the whole truth to the questions put to him in the case aforenamed; that I reduced his answers to writing, and caused him to sign them in my presence.

In testimony whereof, I have hereunto set my hand.

THOS. N. MORGAN,
Associate Judge.

Opened and filed, 3d May, 1842.

W. T. PROUD, *Clerk.*

Interrogatories to Daniel W. Coxe.

"I I I."

SAMUEL DAVIS
vs
THE POLICE JURY of the Parish of Concordia. } No. 536.

Ninth district court, parish of Concordia.

Interrogatories to be propounded to Daniel W. Coxe, a witness for plaintiff, residing in the city of Philadelphia, State of Pennsylvania, but now in the city of Natchez, whose answers, taken under commission before Robert W. Wood, a justice of the peace for the county of Adams, State of Mississippi, or William T. Proud, a justice of the peace for the parish of Concordia, and State of Louisiana, will be read in evidence on the trial of this cause.

Int. 1st. Were you or not a resident of, or had you not a mercantile establishment in, the city of New Orleans, in the years 1800 and 1801, or at that time residing in Louisiana; and what was then your age?

Int. 2d. During the years 1800 and 1801, was or was not the Marquis de Casa Calvo the Spanish governor in the province embracing the post of Concordia?

Int. 3d. Please state whether, to your knowledge, he acted in the capacity of governor under the Spanish government; at what time he commenced exercising the functions of governor, and how long he continued to do so; and please state the means of your knowledge. Was his authority as governor recognised and submitted [to] by the inhabitants of the province? Please state all you know on the subject, as to what the authority and office of the said Casa Calvo was under the Spanish Government, during the years 1800 and 1801, and particularly what his powers were on the 19th February, 1801, and whether at this last mentioned period he publicly exercised the functions of governor under the Spanish Government.

SAMUEL DAVIS.

1592.

Defendants, by their counsel, except and object to the foregoing interrogatories, and the answers which may be given thereto, so far as the same may go to prove the political capacity of the Marquis de Casa Calvo, or his official powers, as evidence of those things must be in writing and of record, and parol testimony is inadmissible to prove them. His commission is the best proof of his capacity, and the law will fix his powers when his capacity is thus proved.

STACY & SPARROW,
Attys. for Defts.

Cross interrogatories by Defendants.

Int. 1st. Was it, or was it not, notorious that the Marquis de Salcèdo was, previous to the year 1800, governor general of the province of Louisiana, and that he retained that office up to the time of the cession of that province to the United States, in 1803?

Int. 2d. If the Marquis de Casa Calvo assumed to act as governor general in 1801, have you any actual personal knowledge that he held an appointment from the King of Spain; and have you any means of knowing, and do you know, any thing more than that he acted, in some things, in that capacity?

Int. 3d. Under this general interrogatory, you will please state any thing else you may know of advantage to the defendants.

STACY & SPARROW,
Attys. for Defendants.

Commission.

THE STATE OF LOUISIANA,
Ninth district court, parish of Concordia:

To Robert W. Wood, esq., a justice of the peace for the county of Adams, State of Mississippi, greeting:

SAMUEL DAVIS
vs.
THE POLICE JURY of the Parish of Concordia. } No. 536.—Margin.

Know ye, that, reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you Daniel W. Coxe, a resident of the city of Philadelphia, State of Pennsylvania, but now in the city of Natchez, and him diligently examine, on his oath or affirmation, touching his knowledge in a certain matter of controversy now pending in the ninth district court of the State of Louisiana, in and for the parish of Concordia aforesaid, in a suit styled as on the margin hereof written, wherein Samuel Davis is plaintiff, and the Police Jury of the parish of Concordia are defendants; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will send enclosed under your hand and seal, directed to the clerk of the said court, in the

town of Vidalia, on or before the fourth Monday of the present month of May, 1842.

Witness the honorable Thomas Curry, judge of said court, this 11th day of May, A. D. 1842.

[SEAL.]

W. T. PROUD,
Clerk of said court.

Deposition of Daniel W. Coxe.

"III."

Ans. to int. 1st. I occasionally resided in the city of New Orleans, where I had a mercantile establishment, from the year 1791 till the year 1811. I was born in 1769.

2d. During the years 1800 and 1801, in part, the Marquis de Casa Calvo was governor of Louisiana, Governor Gayoso having died about August or September, 1799. Casa Calvo arrived and entered upon his duties as governor in 1799. His command must of course have embraced the post of Concordia, opposite Natchez.

3d. I know the Marquis de Casa Calvo acted in the capacity of a governor of the province of Louisiana under the Spanish Government, and commenced exercising the functions of governor, I think, about 1799, and continued so to exercise them, to the best of my recollection, till about May, 1801, when he returned to the Havana. I have a personal knowledge of his exercising the functions of governor of Louisiana, from the fact of his having granted permission to my mercantile concern in New Orleans to introduce a cargo of mercandise from that place into Vera Cruz, as well as by other acts.

Cross interrogatories.

Answer to interrogatory 1st. I answer, that I think Colonel Bouligney acted ad interim, after Gayoso's death, until Casa Calvo arrived from Cuba, of which Government I believe Louisiana was a dependency.

Answer to 2d. I cannot answer a supposititious question of this nature, further than to say that I have already answered substantially, as to the authority and functions of Casa Calvo, in the preceding answers; and, as to the manner in which I have a personal knowledge of his powers and functions, I refer to my answer to the 3d chief interrogatory. In regard to Salcedo, I believe he superceded Casa Calvo as governor, but they both were united in a commission for the delivery of the province by Spain to France.

Answer to 3d. I know nothing further, applicable to either party, that may be useful.

DANIEL W. COXE.

Be it known that, by virtue of a commission to me directed by the honorable the district court of the ninth judicial district of the State of Louisiana, in and for the parish of Concordia, in a certain suit pending in said court, wherein Samuel Davis is plaintiff, and the Police Jury

of the parish of Concordia are defendants, I, Robert W. Wood, a justice of the peace in and for the county of Adams, and State of Mississippi, did cause to appear before me Daniel W. Coxe, a witness on behalf of the plaintiff, age years, and did swear said witness to declare the truth of the questions put to him in said cause, and did reduce to writing the answers of said witness to the interrogatories and cross interrogatories accompanying said commission, in the presence of said witness, and as the same were by him delivered, and did cause said witness to sign his said answers in my presence; and the deposition of said witness is contained in the foregoing pages of writing.

(No signature.)

Defendant's evid nce.

Deposition of Christopher Miller, &c.—Interrogatories.

"K K K."

SAMUEL DAVIS
vs.
THE POLICE JURY OF THE PARISH OF CONCORDIA. } No. 536.

NINTH DISTRICT COURT, *Parish of Concordia:*

Interrogatories propounded to Christopher Miller, Peter Little, and others, of Adams county, in the State of Mississippi, to be by them answered under oath, by virtue of a commission issued from the court aforesaid, whose answers will be used on behalf of the Police Jury on the trial of the above entitled suit.

Interrogatory 1st. What is your age, and how long have you resided in or been acquainted in that part of the country now forming the States of Louisiana and Mississippi; and were you or not formerly acquainted with Joseph Vidal, the commandant of the post of Concordia, situated where the town of Vidalia now stands; and were you or not also acquainted with one Thomas Thompson, who at one time owned a tract of land below said post, and near it? If yes, at what time did your acquaintance with said persons commence, and for how many years did it continue? Were or were not Vidal and Thompson brothers-in-law, or connected by marriage? If yes, what was that connection?

Interrogatory 2. Were you or not, during the years 1801 and 1802, acquainted with the routes which were travelled between the "post of Concordia" to the bayou Cocodra or Crocodile? If yes, please state what were those routes, and where they run, and how many of them there were. Were or were not each and all of those travelled routes mere bridle paths during those years, or was there any one or more of them, during those two years, cut out and cleared thirty or forty feet wide?

Interrogatory 3d. Was there, or was there not, during those years, any road from said post to the said bayou cut out and cleared, or were they only bridle paths indicated and traced out by blazes upon the trees?

Interrogatory 4th. Did or did not Thomas Thompson, during the

and *and* annexed to me, Douglass L. Rivers, a justice of the peace in and for said county. I have caused Christopher Miller and Peter Little to come before me, at my office in the city of Natchez, who, being duly sworn on the holy evangelists of Almighty God the truth and whole truth to depose, the said Christopher Miller, first in order, answers as follows, viz:

To 1st interrogatory. Witness answers, I am nearly seventy-two years old; I have never lived in the State of Louisiana, but have resided in Mississippi about 50 odd years; I was acquainted with Joseph Vidal, the commandant of the post of Concordia; said post was situated where the town of Vidalia now stands; I was acquainted with Thomas Thompson, and know that he lived near the post; I knew the said Thompson fifty years ago, and knew Joseph Vidal about the same length of time; my acquaintance continued several years with the said Thompson and Vidal; I believe they were brothers-in-law.

2d. I was acquainted with the road leading from the post to the bayou Cocodra, having travelled it several times; I knew of only one road, and that was a bridle-way, carriages not being then used; I know nothing of any other roads or bridle-paths.

To the 3d. I have no knowledge of any road from the bayou being cut and cleared; I only recollect that it was a bridle-way; cannot recollect any thing about blazes on the trees.

To the 4th. I know nothing of the matters contained in this interrogatory.

To the 5th. I have no recollection of the road being sufficiently wide to admit carts or wagons; I only know that some man (name unknown) lived on the banks of the Cocodra, and thinks it probable he moved there in some kind of vehicle.

To the 6th. I know nothing of the time or by whom said road was first cut out.

To the 7th. I do not know.

To the 8th. Witness states he knows nothing about the matter contained in this interrogatory.

Cross interrogatories.

To the 1st. Witness answers, I do not know.

To the 2d. The dwelling-house of Capt. Vidal, then situated where the town of Vidalia now stands, was used as the Government-house.

To the 3d. It was; I do not know the limits of said post.

To the 4th. There were cane-brakes and open woods, alternately, from the post to the bayou Cocodra.

To the 5th. I do not know; *I do not know.*

To the 6th. The roads were generally indifferent, and there were very few persons residing in that section.

To the 7th. I know nothing of the matters and things contained in this interrogatory.

To the 8th. Witness answers, I never did.

To the 9th. I have travelled the route several times, both before and after that time.

To the 10th. Witness answers, I know nothing further that will be of use to the plaintiff.

CHRISTOPHER MILLER.

Sworn to and subscribed before me, this 21st day of February, A. D. 1842.

D. L. RIVERS, *J. P.*

Deposition of Peter Little.

KKK.

Peter Little being next sworn, the truth and the whole truth to depose, testifies as follows:

To the first interrogatory. Witness answers, I am upwards of sixty years old. I have been acquainted with the country, formerly a part of Mississippi and Louisiana, since the year 1799, and have resided in the city of Natchez, and in the parish of Concordia, Louisiana, ever since that time; my residence in Concordia commenced since 1834. I was acquainted with Joseph Vidal from the year 1799 to the year of his death. I was also acquainted with Thomas Thompson, who was said to own a tract of land below the Government-house; my acquaintance continued from the year 1799 up to the time of their deaths; said Vidal and Thompson were brothers-in-law.

To the 2d interrogatory. Witness answers, I have no knowledge of the roads referred to in the interrogatory.

To the 3d interrogatory. Witness answers, I know nothing of the matters contained in this interrogatory.

To the 4th interrogatory. Witness answers, I have no knowledge of the matters contained in this interrogatory.

To the 5th interrogatory. Witness answers, I know nothing of the matters contained in this interrogatory.

To the 6th. Witness answers, I have no knowledge of any thing embraced in this interrogatory.

To the 7th. Witness answers, he was so considered.

To the 8th. Witness answers, I know that within the time there was a road; by whom it was cut, or what its condition, I have no recollection, except that it might be said to be a cart road.

Cross interrogatories.

To the 1st cross interrogatory. Witness answers, I do not.

To the 2d cross interrogatory. The Government-house stood below where the town of Vidalia now stands; he resided in the Government-house.

To the 3d cross interrogatory. I do not know how far the lines of the post extended above and below. I do not know the line of the Thompson tract. I think he lived some 2 or 300 yards below the Government-house.

To the 4th cross interrogatory. Witness answers, it was.

To the 5th cross interrogatory. I do not know. I do not know any thing in the interrogatory.

To the 6th cross interrogatory. Answers, I remember nothing of the road. I do not think that more than a half dozen families lived in that part of the country.

To the 7th cross interrogatory. Witness answers, I know that Thomas Thompson did keep the ferry nearly opposite Natchez, but I know nothing of the conditions on which he exercised the right.

To the 8th cross interrogatory. Witness answers, I never did.

To the 9th cross interrogatory. Witness answers, I have no recollection of travelling there prior to 1803, since which time, I have travelled there several times.

To the 10th cross interrogatory. Witness makes answer: The ferry landing on the Mississippi side has been removed some hundred and fifty or two hundred yards up the river since 1805. The reason of such removal was owing to the caving of the banks and the roads belonging to such ferry.

PETER LITTLE.

Sworn to and subscribed before me, this 28th day of February, A. D. 1842.

D. L. RIVERS, *J. P.*

The above examination having been carefully read to and understood by the deponents respectively, and by them subscribed in my presence, it is certified to under my common seal of office, this 28th day of February, A. D. 1842.

D. L. RIVERS, *J. P.*

Opened and filed 12th April, 1842.

W. T. PROUD, *Clerk.*

Document marked "L L L."

To the honorable David Lattimore, parish judge in and for the parish of Concordia, Orleans territory.

The petition of Rubin Nicholls, of the parish aforesaid, respectfully represents, that the license for keeping the ferry across the Mississippi river, from Natchez to the post of Concordia, expired on the seventh of March last; therefore prays your honor to grant him license to keep ferry at said place, under the requisitions of the statute in such case made and provided, to take date from the said ninth March; and your petitioner, as in duty, &c. April 13th, 1810.

REUBIN NICHOLLS.

STATE OF LOUISIANA, *parish of Concordia:*

I certify the above to be a true copy of *from* the original on file in my office.

In testimony whereof I have hereunto set my hand and the seal of my office, at Vidalia, this 11th day of April, A. D. 1840.

[SEAL.]

G. W. KEETON, *Parish Judge.*

Filed December 8th, 1842.

THOS. EDWARDS, *Deputy Clerk.*

1593.

License marked "M M M."

ORLEANS TERRITORY, *parish of Concordia:*

Be it remembered, that, on the seventh day of March, in the year of our Lord one thousand eight hundred and twelve, personally appeared before the undersigned, judge of the parish aforesaid, Oliver Fairchild, and acknowledged himself indebted to the government of the territory of Orleans in the sum of one hundred dollars, to be levied of his proper goods and chattels, lands and tenements, upon this condition: That whereas, on the day of the date hereof, the said Oliver Fairchild hath taken out license to keep a ferry from the town of Vidalia, across the river Mississippi to Natchez, at the usual place of keeping the same, for one year from the 7th day of March, 1812. Now, if the said Oliver shall faithfully keep and attend such ferry, with such safe boats, with as many men and such implements to work the same as shall be deemed necessary, at such rates as is or shall be legally determined upon, then [the] above obligation or recognisance to be void; otherwise to be and remain in full force and virtue.

Given under my hand this seventh day of March, in the year of our Lord one thousand eight hundred and twelve.

[no seal].

JAMES DUNLAP,
Judge of the parish of Concordia.

STATE OF LOUISIANA,
Parish of Concordia:

I certify the above to be a true copy of the original on file in my office.

In testimony whereof I have hereunto set my hand and the seal of my office, at

G. W. KEETON, *Parish Judge.*

Filed December 8th, 1842.

THOS. EDWARDS, *Deputy Clerk.*

Bond marked "N N N."

ORLEANS TERRITORY, *parish of Concordia:*

Be it remembered, that on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and ten, personally appeared before the undersigned, judge in and for the parish aforesaid, Reubin Nicholls, and acknowledged himself to owe and be indebted to the government of the territory of Orleans in the sum of one hundred dollars, to be levied on his proper goods and chattels, lands and moveables, upon this consideration: That if the said Reubin Nicholls shall faithfully keep and attend a ferry across the Mississippi river, from the west margin thereof, opposite the Natchez landing, at the usual place of keeping the same, with sufficient boats, hands, and implements to work the same, as shall be deemed necessary, and at such rates as may be legally determined on, for the space of one year from the seventh day of March

last, then, and in that case, this obligation or recognisance to be void; otherwise to be and remain in full force and virtue.

RUBIN NICHOLLS.

Signed and acknowledged the day and year first above written.
Before D. LATTIMORE,
Judge of the parish of Concordia.

STATE OF LOUISIANA,
Parish of Concordia:

I certify the above to be a true copy of the original on file in my office.

In testimony whereof I have hereunto set my hand and the seal of my office, at Vidalia, this 11th day of April, A. D. 1840.
[SEAL.]
G. W. KEETON, *Parish Judge.*

Filed December 8th, 1842.
THOS. EDWARDS, *Deputy Clerk.*

Bond marked "O O O."

THE STATE OF LOUISIANA,
Parish of Concordia:

Be it remembered, that on the 14th day of August, in the year of our Lord one thousand eight hundred and thirteen, personally before the undersigned judge of the parish aforesaid, appeared William Thompson, and acknowledged himself indebted to the government of the State of Louisiana in the sum of one hundred dollars, upon this condition: That if the said William Thompson shall faithfully keep and attend a ferry across the Mississippi river, from the plantation of Joseph Vidal, for one year from the date herein, with sufficient and safe boats, and with the necessary hands to work the same, and to give due and proper attendance at all times, then the above obligation to be void; otherwise to be and remain in full force and virtue.

WILLIAM THOMPSON. [SEAL.]

Signed and acknowledged before me, the day and year above written.
JOHN PERKINS,
Judge of the parish of Concordia.

STATE OF LOUISIANA, *parish of Concordia:*

I certify the above to be a true copy of the original on file in my office.

In testimony whereof I have hereunto set my hand and the seal of my office, at Vidalia, this 11th day of April, 1840.
[SEAL.]
G. W. KEETON, *Parish Judge.*

Filed 8th December, 1842
THOS. EDWARDS, *Deputy clerk.*

1390.

Bill of exceptions.

Ninth district court, parish of Concordia.

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

Be it remembered, that on the trial of this cause the defendant offered to read an amended answer, in which they claim the value of the rents and profits of the ferry since the injunction was granted; to which plaintiff's counsel objected, on the ground that the defendants could not claim any damages in this suit, but must resort to separate action in the event of a decision in their favor, and that no reconventional demand is set up, and none could be set up, on such grounds; and the court having overruled the objections, and decided to admit the amended answer, this bill of exceptions was tendered and signed.

Signed in open court, this 8th day of December, 1842.

THOS. CURRY,
District judge, 9th judicial district.

Filed 8th December, 1842.

THOS. EDWARDS, *Deputy clerk.*

Bill of exceptions.

District court, parish of Concordia.

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

Be it remembered, that on the trial of this cause the defendants offered to prove, by P. Little, what the revenues derived from the ferry had been previous to the injunction obtained in this case, and the plaintiff's counsel objected to it on the ground that the evidence was not relevant or pertinent to any of the issues; and the court having overruled the objection, and admitted the evidence, this bill of exceptions was presented and signed.

The court allowed the utmost latitude to the inquiry, so far as it went to elicit facts and incidents connected with the alleged grant and exercise of the perpetual right of ferry across the Mississippi, it being the matter in contest between the parties.

Signed in open court, this 8th day of December, 1842.

THOS. CURRY,
District judge, 9th judicial district.

Filed 8th December, 1842.

THOS. EDWARDS, *Deputy clerk.*

Ordinance of the Police Jury.

An ordinance to establish public ferries, and to fix a parish tax thereon.

Sec. 1st. Be it ordained by the Police Jury of the parish of Concordia, That the ferries opposite Thompkinsville, Vicksburg, and Warrenton, at Coffee's Point, at Mrs. Brooks', Rodney, Rifle Point, and Vidalia on the Mississippi river, and Tenney's on Tensaw river, Mrs. Smith's on Bayou Vidal, and Mr. Easham's on Roundaway Bayou, be, and they are hereby, established public ferries.

Sec. 2d. Be it further ordained, That the proprietor or proprietors of each ferry shall pay a parish tax, annually, as here established, viz:

The Thompsonville ferry shall pay - - -	$5 00
The ferry opposite Vicksburg, - - - -	10 00
" " " Wawaton, - - - -	10 00
" " at Mrs. Brokes' - - -	5 00
" " opposite Rodney, - - - -	10 00
" " " Rifle Point, - - - -	5 00
" " " Vidalia, - - - -	10 00
" " " Morrison Tensaw, - - -	3 00
" " " Mrs. Smith's, - - - -	3 00
" " " Mr. Easham's Point, - - -	3 00

Sec. 3d. Be it further ordained, That the proprietors of the land, at any of the said established ferries, shall be deemed the proprietor of said established ferries; and it shall be his or her duty, (if on the Mississippi river,) to keep at his or her ferry landing at least one ferry flat and one good skiff, in good repair; but if on any other river or bayou, one good ferry flat shall be sufficient.

Sec. 4th. Be it further ordained, That if any such proprietor shall fail to keep in good repair his or her boats, or neglect his or her ferry, or neglect or refuse to cross any person or persons, to his, her, or their prejudice or injury, who may wish to cross at such ferry, said ferry shall be sold for the term of one year.

Sec. 5th. Be it further ordained, That it shall be the duty of the clerk of the Police Jury, when ordered by said jury, immediately to advertise, at the court-house door, giving twenty days notice of the time of said sale of said ill kept ferry.

Sec. 6th. Be it further ordained, That the clerk of the Police Jury shall sell to the highest bidder, for cash, such ill kept ferry, and shall be allowed for his services two dollars, to be paid him out of any unappropriated money in the parish treasury.

Sec. 7th. Be it further ordained, That when any established ferry is kept in good repair, and another or other ferries be opened and kept by another, or other persons, within five miles of said well kept ferry, on said water course, for pay, the proprietor or proprietors of said ferry shall pay a tax of one dollar per day, until his or her ferry be established by the Police Jury.

Sec. 8th. Be it further ordained, That said ferry tax shall be collected

and paid over to the parish treasury in the same manner as the parish tax, and the collector shall have the like commissions for his services.

Sec. 9th. Be it further ordained, That any ordinance or ordinances, contravening the provisions of this ordinance, be and the same are hereby repealed.

Ordained this 28th day of November, A. D. 1834.

GEO. S. GUION, *President*.

Attest: G. W. KEETON, *Clerk*.

Extracts from the minutes.

Ninth district court, December term, A. D. 1842.

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

December 9th, 1842.

Jury waived by consent, and that the evidence taken down in open court, on the former trial, be used on the present trial.

December 9th, 1842.

Same
vs. } No. 536.
Same.

This cause coming up for trial, after closing the evidence, the court deferred the arguments of counsel indefinitely.

December 21st, 1842.

Same
vs. } No. 536.
Same.

This cause being submitted to the court, it is agreed between the parties that each would furnish briefs to the court, and that the judge give his decision on or before the next term of this court.

Ninth district court, parish of Concordia, 22d May, 1843.

Same
vs. } No. 536.
Same.

Ordered, That the judgment rendered at chambers, in this case, on the 28th day of March, 1843, be entered on the minutes of this court as of the last term, by consent of counsel.

Judgment.

On trial, ninth district court for Concordia.

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia.

This cause was tried at the June term, 1841, before the court and a jury. On appeal to the supreme court at Alexandria, October term, 1841, the judgment was reversed, and the cause remanded for a new trial. Sec. 19, La. Rep., 533.

The case has been sent back for a trial de novo; the merits remaining open for such judgment as may be rendered, after admitting all the proof and legal evidence adduced by the parties. The only points or principles settled by the supreme court seem to relate solely to the mode of proceeding, with the proofs on either side, and the admissibility of evidence.

The supreme court, however, say in their decision, that the consideration of the grant of the perpetual right of ferry set up and claimed by the plaintiff, was the making of the road from the Mississippi river to the Bayou Crocodile, thirty or forty feet wide, by Thomas Thompson, as stated in the certificate of the commandant. The court further says, that the certificate of the commandant "that the road was made, and the condition of the grant performed," is only prima facie evidence, which the defendants may contradict. But the defendants deny the right or authority of the Marquis de Casa Calvo to give or confer the perpetual and exclusive right of ferry to Thompson, even if he was vested with all the powers and authority of military and political governor of the province of Louisiana.

It becomes necessary, therefore, to examine—

1st. Was the Marquis de Casa Calvo invested with the authority and powers of a military and political governor of the province of Louisiana at the time of granting the right of ferry in question?

2d. Had the Spanish governors of Louisiana the power and right to grant a perpetual and exclusive right of ferry to any subject or citizen?

3d. Were the conditions on which the right of ferry was granted in this case *been* performed by the grantee, and the right thereto vested successively in his vendees and the plaintiff?

1. There is no doubt of the fact, and it is a matter of historical notoriety, that the Marquis de Casa Calvo acted as governor of Louisiana. He was at least governor de facto, and his public official acts have never been denied or disowned. The evidence in this case I deem conclusive, that he was fully authorized to administer the government, although not actually commissioned by the king. He derived his authority from the captain general of the Island of Cuba, and was governor ad interim between the death of Gayoso de Lemas and the arrival of Salcedo. "Louis Bouligney, witness for plaintiff, declares he lived in Louisiana in 1799, and was born here, which has been the place of his residence all his life. He is now (1842) 61 years of age. The Marquis de Casa Calvo arrived here as governor ad interim the 1st of October, 1799, remained and acted as governor until June or July, 1801, at which time he was replaced by Don Manuel de Salcedo. On the death of Don Manuel Gayoso de Lemos, the last day of July 1799, the captain general of the Island of Cuba sent here as governor ad interim the Marquis de Casa Calvo, to replace the deceased governor, until the arrival of

him who should be commissioned by the King of Spain. He was sent here by the captain general of the Island of Cuba, (Louisiana being at that time a dependency of the captain general.) He was invested during this time with the powers and authority, civil and military, of one named and commissioned by the king. He arrived here the 1st of October, 1799, and remained governor until June or July, 1801, when he was superseded by Salcedo. Witness was at the time about 21 years of age, and being an officer of the regiment of infantry of Louisiana, had a perfect knowledge of these facts."

Richard Relf, John McDonaugh, and Dan'l W. Coxe, resided in New Orleans in 1800 and 1801, to the present time, (except the latter,) who had a mercantile establishment there from 1791 to 1811. These gentlemen, of the first intelligence, testify to the material facts, and fully corroborate the testimony of Mr. Bouligney. From all this evidence, corroborated and supported as it is by historical facts, there cannot be a doubt but that Casa Calvo possessed and exercised all the powers of the Spanish governors of Louisiana at the time of granting the privilege claimed by the plaintiff.

II. The next point to be examined is, whether the Spanish governor of the province of Louisiana possessed the power to make a valid grant of the perpetual and exclusive right of ferry.

It is denied that the Spanish government had any authority to make any grants of land or privileges such as are here claimed, because, by the treaty of St. Ildefonso, October 1st, 1800, Spain retroceded Louisiana to France, and was, from that time, divested of all right of sovereignty over the province of Louisiana, except merely to preserve and maintain order until actual delivery of possession. But, from the terms of the treaty, a different conclusion may be drawn. It provides that, six months after the full and entire execution of the conditions and stipulations, his Catholic Majesty promises and engages to retrocede the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; possession, by the terms of the treaty itself, was not to be delivered until six months afterwards. In the mean time, without an express stipulation, Spain would continue to exercise all acts of ownership and sovereignty over the province; and also, in the mean time, the grant of privilege of a ferry, as claimed here, was made. It appears clear, therefore, that Spain had not lost her dominion, in as full a manner as she had previously possessed it, over this colony, when the right of ferry in question was granted. If she ever had the right or power to make such a grant, she had it then. This grant of exclusive right or privilege, in perpetuity, to keep a ferry, is admitted to be an act of sovereignty. But the defendants' counsel urges, that the power to provide public highways (ferries) is an attribute of sovereignty always residing in the State; that it is a component part of the right of levying taxes; that it was given first to the county judges the authority to grant license to keep ferries, which were declared to be public inns. They were empowered to make all such regulations as they might deem expedient for estab-

lishing ferries, and for annually letting to farm to the highest bidder. See session, 25th March, 1813.

The positions here assumed are undoubtedly true, so far as regards all ferries, or rights and privileges of ferries, which have not been already granted away. Whether the sovereign authority of the State of Louisiana could take away this privilege, either absolutely or by indemnifying the proprietor, is not made a question in this case. If such an exclusive privilege or right was ever granted it still exists, for the evidence shows conclusively to my mind that such a right of using and keeping the ferry has been exercised by the grantee, Thompson, and his vendees, Vidal and Davis. There has been no attempt to annul or take away the right by legislative authority.

It appears to me, the governors of the province of Louisiana, exercising the sovereign authority derived from the government or sovereign of Spain, did possess and exercise the power and authority to grant such a right to an individual as was conferred on Thompson. The motive inducing the act was a public service or improvement. The exercise of sovereign authority, uncontrolled except in acts derogatory to public security, presupposes the right to make grants in perpetuity, in consideration of a permanent improvement for the good of the whole community. It has been held, by the supreme court of this State, that the legislature possesses the power of granting exclusive rights and privileges, as the reward for constructing roads, in the same manner as Congress may reward the discovery of a new invention, by granting a patent to the exclusive use and benefit of it. See Pontchartrain Railroad Co. vs. Orleans Nav. Co., 15 La. Rep., 404.

There appears to my mind no doubt about the power of an uncontrolled sovereign authority to grant monopolies or exclusive privileges, however much the policy may be questioned. It is also denied that the grant in question was made in perpetuity, because there are no express words to that effect. That it does not purport on its face to be made in perpetuity, or made to Thompson and his heirs, &c., and that it is made for no determinate length of time, &c. The grant must speak for itself. Thompson asks, or petitions, that he may be granted to hold the ferry from his plantation to the landing of Natchez, as a privilege attached to his plantation. Governor Casa Calvo grants him the privilege he prays for, to be attached to the plantation he possesses, in order that, from that place, with the exclusive privilege, he may carry on the ferry of the river, demanding and receiving only the prices the most equitable and customary, &c. The terms of his grant are explicit; the privilege is exclusive, and without limitation as to time, being attached to the plantation. It may be considered in the light of a servitude which passes with the plantation, and exists in the hands of the vendee. The evidence shows that the ferry has [been] kept up by the grantee and his successors or vendees, either by themselves or lessees, until the present time. It is further contended that, by the express terms of the grant, it is limited to the front boundary of the Thompson plantation. The evidence shows that the ferry boat and landing is used, and leaves the

Louisiana shore of the Mississippi from a quarter to half a mile above the Thompson plantation. But it is shown by the evidence to be much more convenient to the public that it should be kept where it now is. This discrepancy between the use and the terms of the grant may be cured by the evidence, which shows that the Thompson tract of land or plantation was, soon after the grant, annexed to the plantation immediately above, embracing the post of Concordia, and the place of keeping the ferry, and that both plantations have been united in the same individual owner from that time, and now belong to the plaintiff. So far as the public is concerned, this slight deviation from the strict letter of the grant, operates a public benefit, and is from the change made in the bank and landing on the opposite side, rendered absolutely necessary almost to the practical use and enjoyment of the privilege of keeping the ferry.

III. The last point, and a very material part of the case, is, have the conditions on which this grant was made been performed. In addition to the certificate of the commandant, that Thompson had "executed, under his inspection, what was presented to him by the Governor" as the condition of the grant, to cut—the cutting out the road from the post to the Bayou Concordia, &c.—the plaintiff has produced evidence, on the second trial, which seems conclusive on this part of the subject. George W. Lovelace, a resident of the parish of Catahoula, declares, on oath, that he travelled in 1801 from the post of Rapides to Natchez; he was then 19 years of age, and it was his first acquaintance in the parish of Concordia; Thomas Thompson then kept a ferry across the Mississippi river, at the post of Concordia, opposite Natchez; in the month of July, 1801, he found a road running from Natchez to the Cocodra, and cut out from Boggy bayou to Thompson's house, which he understood was made by order of Vidal; it was the only road he knew running across from the post of Concordia to Rapides, and was used as a public road in travelling, and called "the Vidal road," at Rapides; he knew Thompson 5 or 6 years previous to 1801, but knows nothing of his making this road, or any other, nor by whom it was made; the road ran through a thick cane-brake into the open swamp, and was thickly timbered all the way; it was sufficient to accommodate the line of travel at that time—"was used by foot and horse, and might have been used by wagons; it was a very well cut road; there was a bridge over the Boggy bayou, and no other bayou between it and the river except the Cocodra."

Cross examined. Witness says road crossed the Cocodra where Lee afterwards lived; this road started at Thompson's house, run to Boggy bayou, and no further; there was no other road that he knew of; the trees, logs, brush, and cane, were cleared off, but by whom he knew not; a cart might have passed conveniently; it was a pretty good road through a swamp; he knew it had been cut out, but cannot tell how wide; in 1803 he passed that way, and found a pretty good road all the way to Caddy's, (now Trinity;) it went by the name of the Vidal road, and run from Thompson's, on the Mississippi, to Caddy's, opposite the

mouth of Little river. Judge Perkins says he crossed from Natchez to the post of Concordia, in the summer of 1800, on a visit to Vidal, the commandant, &c.; there was a ferry on both sides of the Mississippi; that on the Louisiana side was kept by the lessees of Vidal; there was a road called the Thompson road, between the Thompson and Vidal tracts of land, below what is now called Vidalia, leading from the Mississippi to Lake Concordia, toward the mouth of the Bayou Cocodra, coupled while open with the ferry at Vidalia; does not know if it extends to the Bayou Cocodra, but was in public use; saw it in 1804 and 1812, but does not know when, nor by whom, made; occasionally the Thompson road was used for carts to Lake Concordia and back; there were few, if any, wagons then. Witness knew this road as leading out through a lane from the river, called Thompson's road, which was shut up in 1810, or about that time, after opening the road at Vidalia leading directly back to the lake, under the authority of the Police Jury.

Gen'l Joseph Walker sworn: Says he was frequently at the post of Concordia in 1802–'3, and resided about three miles below from 1804 to 1807; there was a ferry kept there in 1803 or '4 by Thomas Thompson; in the fall of 1802 there was a road cut from the post of Concordia to the Bayou Cocodra, crossing it at the place afterwards called "Lee's," crossing and running to Caddys Hebrard's ferry, on Black river; as well as he recollects, it was cut by Thompson, and it was used by the public in travelling to and from those points; that he was acquainted with Thompson near fifty years ago, and believes he made this road; it passed through cane land and open woods back of it—occasionally some little cane; it was sufficient for the line of travel, for at that time it was but little travelled, except on horseback or on foot; it went through a cane ridge, a little below Vidalia, and then through the open woods; in 1803–'4 witness, Thompson, and the neighbors, cut a road from Vidalia down the river 4½ miles, to Carter's old place, or "Little lake," about 20 feet wide.

Policarp Lamothe says, he was at the post of Concordia in 1801 or 1802, trading in cattle. There was then a ferry, and Vidal's soldiers assisted in passing his cattle over, but don't know who kept the ferry. He crossed Black river, at the junction of Little river, at Caddy Hebrard's ferry, from which point there was a road all the way to the Mississippi river, after which it extended up the river to the ferry landing opposite Natchez, a distance of three or four miles. Witness knew the road from the ferry landing at the post of Concordia to the Cocodra, which he first saw in 1800, and 1802, but does not know the name of it, or by whom made or cut out. He knows only the road already described as running along the margin of the Mississippi river, 3 or 4 miles, and extending across to Caddy Hebrard's ferry, at the junction of Black and Little rivers; there might have been a road extending back to the Cocodra from the ferry direct, but witness does not remember it.

Francis Henderson sworn, (all the above for plaintiff,) says, he lived 9 miles above the post of Concordia (now Vidalia) and moved down

there in 1801; was acquainted with the country 4 or 5 years before, and remained until 1813; was 20 years old when he first became acquainted with it. There was a private ferry kept by Job and Jeremiah Routh, but in 1801 Thomas Thompson kept a ferry for public use. Witness knows there was a road from the ferry to the Bayou Cocodra, and he believes Thompson cut it out. Thinks he saw him cut it, and has often travelled on it about that time; knows it was made prior to 1802; was used by the public and called Thompson's road. Witness was acquainted with Thompson from his boyhood; the road was wide enough for wagons, and was occasionally *was* used as a wagon road, although he has no recollection of seeing wagons on it, only the impressions they made; knows of no other road but the one cut by Thompson prior to 1802; it went directly through the woods to the Cocodra lake or bayou, and was passable for teams, at that time part, if not the whole of the way through; know not how wide exactly.

Gen'l David B. Morgan says, he was acquainted with this road in 1802, and knew no other leading from post of Concordia to Lake Concordia. It was a road cut out through the woods and cane, travelled by carts and wagons, but was not so much as 30 or 40 feet wide. In 1805 he travelled as far as the Bayou Cocodra, and there was then a road from the post of Concordia to Bayou Cocodra, which carts and wagons might have travelled, but does not know by whom cut out. In 1802 this was known as the Thompson road; it was a public road, but knows not how it was made. He was acquainted with Thompson previous to 1803, who frequently, to that time, kept a public ferry across the Mississippi, nearly opposite to Natchez; that it was generally known that this right had been granted to Thompson by the Spanish Government, and the latter never interfered with him. The depositions of Chris. Miller and Peter Little were also read, and corroborate the above.

From the foregoing testimony of witnesses of the highest standing and integrity, there cannot exist a doubt but that Thompson made the road in question, and in pursuance of the conditions of a perpetual and exclusive right of ferry attached to his plantation. It does not appear clear that the road was made of the width specified in the grant. It was at least wide enough for all the purposes of a public road, and I am not prepared to say the conditions have not been performed on which this right of ferry depends; on the contrary, the case seems to be well made out for the plaintiff, especially the proofs of facts and circumstances, which happened so remotely, and are of such ancient date. The testimony offered by defendants to counteract and disprove that of the plaintiff, I am of opinion has wholly failed.

It appears, from the ordinance of the Police Jury in 1813, that the rates of ferriage in relation to this ferry were regulated and fixed by the Police Jury of the parish of Concordia. This right in the Police Jury does not seem to be contested, at least so far as it refrains from impeding or impairing the perpetual and exclusive right of ferry.

Wherefore, it is considered by the court, and the law and evidence

being in favor of the plaintiff, it is therefore ordered, adjudged, and decreed, that the plaintiff's injunction herein allowed be rendered perpetual. And it is further ordered, that the said plaintiff, Samuel Davis, be confirmed in perpetual and exclusive right to keep a ferry from the town of Vidalia, as a right attached to his plantation, and as originally granted to Thomas Thompson, on the 19th February, 1801, by the Marquis de Casa Calvo, then exercising the powers and authority of military and political governor of the province of Louisiana. And it is further ordered, that defendants pay the costs of this suit.

Done and signed at Chambers, this 18th day of March, 1843.

THOS. CURRY,
Dist. judge 9th judicial district.

Petition of appeal.

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

To the honorable the judge of the ninth judicial district of the State of Louisiana, holding sessions of the district court in and for the parish of Concordia.

The petition of the Police Jury of the parish of Concordia respectfully shows, that at the December term of your honorable court, A. D. 1842, a certain suit, numbered on the docket of said court 536, and styled Samuel Davis vs. The Police Jury of the parish of Concordia, was tried, but no decision rendered at said term of the court; and that, by consent of parties, the record of the suit was submitted to your honor, who was, by agreement of parties, to render a judgment in said suit during vacation, and at chambers; that, in pursuance of the premises, your honor did, at chambers, on the 18th day of March, 1843, render and sign a final judgment in said suit, which your petitioners believe to be erroneous, and that they are aggrieved thereby; that the amount in controversy in said suit exceeds the sum of three hundred dollars, and that your petitioners are desirous of appealing from said judgment to the supreme court of the State of Louisiana.

Wherefore, the premises considered, your petitioners pray to be permitted to take a devolutive appeal from said final judgment to the supreme court of the State of Louisiana, holding sessions for the western district of said State, in the town of Alexandria; and that said appeal be made returnable into said court on the first Monday of October, 1843, and that Samuel Davis, the appellee, be cited to appear then and there to answer this appeal.

D. S. STACY, *Att'y for pet'r.*

Order of appeal.

Let an appeal be granted, as prayed for, in the foregoing petition, returnable to the supreme court at Alexandria, the first Monday in October, 1843. The petitioner giving bond and security in the sum of

two hundred dollars, conditioned according to law. Signed this 18th day of March, 1843.

THO. CURRY,
Dist. judge ninth judicial district.

Filed 20th March, 1843.

THOS. EDWARDS, *Deputy Clerk.*

Appeal bond.

STATE OF LOUISIANA, *parish of Concordia:*

SAMUEL DAVIS
vs.
THE POLICE JURY, of the parish of Concordia. } No. 536.

Be it known and remembered, that we, "The Police Jury of the parish of Concordia" as principal, and David S. Stacy, of the parish of Concordia and State of Louisiana, as surety, are held and firmly bound unto Samuel Davis in the sum of two hundred dollars, lawful money of the United States; for the payment whereof, well and truly to be made, to the said Samuel Davis, his heirs, or assigns, we bind ourselves, our successors in office, or assigns, firmly by these presents. Dated, executed, and delivered this 10th day of April, A. D. 1843.

Whereas the above bound, the Police Jury of the parish of Concordia, has prayed for and obtained an order of appeal from a certain final judgment rendered against them in the ninth district court of the State of Louisiana, holden in and for the parish of Concordia, on the 18th day of March, A. D. 1843, at chambers, in a suit wherein the said Davis is plaintiff, and the said Police Jury of the parish of Concordia defendants, which said appeal is returnable to the next supreme court, to be holden at Alexandria, for the western district of the State of Louisiana, on the first Monday of October next, A. D. 1843.

Now the condition of this obligation is such, that if the said appellants, "The Police Jury of the parish of Concordia," shall prosecute their said appeal with effect, at the next term of the said supreme court, and shall pay or satisfy such judgment as may be rendered against them in the premises, in case they shall be cast in said appeal, then this obligation shall be null and void, otherwise remain in full force and virtue.

Signed and delivered the day and date above written.

D. S. STACY

Citation of appeal.

STATE OF LOUISIANA,

Ninth district court, parish of Concordia:

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } No. 536.

The State of Louisiana and said court, to Samuel Davis, residing in the parish of Concordia, State of Louisiana.

Whereas, the Police Jury of the parish of Concordia, defendants and appellants in the above styled suit, have filed in this court their petition, and obtained an order of appeal thereon, from a certain final judgment rendered against them in said suit in this court, at chambers, on the 18th day of March, A D. 1843, a copy of which petition and order of appeal accompanies this citation, which appeal is returnable to the supreme court of the State of Louisiana, for the western district, to be holden at the town of Alexandria, on the first Monday in October next, A. D. 1843. And the said Police Jury, appellants, having given bond and security, as required by law and the order of the court, you are therefore hereby cited to be and appear, either in person or by attorney, in the said supreme court, for the western district, at the town of Alexandria aforesaid, on the said first Monday in October next, to answer to the said petition of appeal, according to law.

Witness the honorable Thomas Curry, judge of the ninth judicial district of the State of Louisiana, and presiding judge of this [SEAL.] court, and the seal thereof, this 29th day of April, anno domini one thousand eight hundred and forty-three.

THOS. EDWARDS,
Deputy clerk of said court.

Sheriff's return.

Received 29th day of April, 1843, and served on the 2d day of May, 1843, by handing a true copy of this citation of appeal, and order of appeal thereon, to Samuel Davis in person in this parish.

A. C. HUNTER, *Sheriff.*

Clerk's certificate.

STATE OF LOUISIANA,
Parish of Concordia.

I, W. Byrnes, clerk of the district court of the ninth judicial district of the State, and for the parish aforesaid, do hereby certify, that the *proceeding*, from page number one to page number forty-four inclusive, composing this record, contains a true copy of all the documents on file in my office, in the suit of Samuel Davis vs. the Police Jury of the parish of Concordia, No. 536; a correct transcript of all the proceedings had, and of all the testimony adduced on the trial of the above stated cause, since the first trial of said cause.

In testimony whereof I have hereunto set my hand, and the [SEAL.] seal of said court, this 8th day of July, A. D. 1843.

W. BYRNES,
Clerk of said court.

Filed October 2d, 1843.

A. L. BRINGHURST, *Dy. clerk.*

1603.

(Conclusion of the second record of appeal from the district court.)

Proceedings in supreme court on second appeal.

Supreme court, western district, Alexandria.

Thursday, 1st of October, 1844; court met pursuant to adjournment. Present, the hon. H. A. Bullard, A. Morphy, Ed. Simon, R. Garland.

SAMUEL DAVIS
vs.
POLICE JURY of Concordia. } 1028.

Argued.

Extract from the minutes.

Thursday, 31st October, 1844; court met pursuant to adjournment. Present, the hon. H. A. Bullard, A. Morphy, R. Garland.

SAMUEL DAVIS
vs.
THE POLICE JURY of the parish of Concordia. } 1028.

Under advisement.

Extracts from the minutes.

Supreme court of the State of Louisiana, at Alexandria.

Thursday, September 17th, 1846; court met pursuant to adjournment. Present, their honors, George Eustis, chief justice; Pierre A. Rast, George R. King, and Thomas Slidell, associate justices.

SAMUEL DAVIS
vs.
POLICE JURY of Concordia. } 1028.

The argument of this case was commenced by Mr. Elgee, for the plaintiff.

Friday, September 18th, 1846; court met pursuant to adjournment. Present, their honors, George Eustis, chief justice; Pierre A. Rost, Geo. R. King, and Thomas Slidell, associate justices.

SAMUEL DAVIS
vs.
POLICE JURY of Concordia. } 1028.

This case was argued by Messrs. Bullard and Stacy for the defendants, and Mr. Elgee for the plaintiff.

Saturday, September 26, 1846; court met pursuant to adjournment. Present, their honors, George Eustis, chief justice; Pierre A. Rost, Geo. R. King, and Thomas Slidell, associate justices.

SAMUEL DAVIS
vs.
THE POLICE JURY. } 1028.

His honor Judge Eustis did not sit on the trial of this cause.

In this case it is ordered, adjudged, and decreed that there be judgment in favor of the defendants, with costs in both courts; it is further

ordered and adjudged that the rights of the defendants to recover from the plaintiff such damages as they may have sustained by the suing out and continuance of the injunction be reserved.

Opinion and judgment.

SAMUEL DAVIS vs. THE POLICE JURY. } 1028. Rost, J.

This case has been already before the supreme court; the facts it discloses, and the questions it presents, are fully stated in the opinion of the court. See 19 La., p. 533. It was remanded for the admission of evidence rejected on the first trial; that evidence is now in the record, and the case is before us, on an appeal taken by the defendants, from a judgment rendered against them on the second trial. The first ground on which they ask a reversal of the judgment is, that the Marquis de Casa Calvo was not governor of Louisiana at the time he made to Thomas Thompson the grant under which the plaintiff claims, and that if he had been he had not the power to make such a grant.

Casa Calvo was a brigadier general in the Spanish armies, and when the colony was delivered to France he acted as commissioner, with Salcedo, the then governor. It does not appear that he ever had a commission from the King of Spain as governor; but it is proved that Gayoso having died in 1799, he was sent here by the captain general of the Island of Cuba, whose jurisdiction extended over the province of Louisiana, to act as governor *ad interim*, until the arrival of the person who should receive a commission from the King, and that he did act in that capacity, from the beginning of October, 1799, till June or July, 1801, at which time General Salcedo arrived. Among the witnesses is an officer who served under him during that time, and a merchant, who was enabled, by his assistance, to introduce a cargo of merchandise from New Orleans into Vera Cruz. The evidence is uncontradicted, and bears upon its face the character of truth; as it is well known, that military officers of high rank were often intrusted by the Spanish government with important civil offices in the colonies, we consider it proved that Casa Calvo was governor *de facto*, on the 19th of February, 1801, at which time the grant bears date.

The question whether he had the power to make the grant cannot be determined in this controversy. The defendants cannot question his authority; unless a prohibition to make such grants is shown, we will presume the authority from the fact of its being exercised. Neither he nor the intendant considered that the prohibition to grant lands extended to the granting of privileges to keep ferries; and we shall not, without sufficient cause, disregard the construction they both put upon their respective jurisdictions. The grant of the land on which the ferry is established was made by the intendant, that of the ferry by the governor. The presumption is, that both acted within the sphere of their powers. Devall vs. Chappin et al., 15 L. 566, and the cases there cited. See also the United States vs. Arredondo et al., 6 Peters, 691.

The effect of the treaty of San Ildefonso, upon the grants made by the Spanish government subsequent to its date, is a question not open to our inquiry; we are not called upon to pass upon the sovereign rights and powers of the United States or the State of Louisiana; whatever these may be, the Police Jury of the parish of Concordia has no warrant for their exercise, and is bound by the acts of a former government, so long as the present government suffers those acts to remain undisturbed. It is proper to state, however, that the validity of the grants of land made by the Spanish government, after the date of that treaty, is recognised by the fourth section of the act of Congress, passed in 1805, for the adjustment of land claims in Louisiana. 1 Martin's Digest, 244.

Upon the second ground taken by the defendants, that the conditions of the grant had not been complied with, a great deal of evidence has been introduced on both sides. It shows that Thompson did make a road; and several witnesses testify that it was sufficient for the line of travel of those days. It is well known that at that period, and long after, inland roads in Louisiana were nothing but traces. The Spaniards carefully avoided the labor of cutting down trees; they found it easier to make a mark upon them, and use them as guides through the wilderness. When the cane and underwood were cut away, and the trees blazed, the road was considered as made. The roads on the banks of navigable streams were the only exceptions. These were royal roads, and the timber upon them was to be cut down and removed, by an express condition in the grants of the lands fronting upon them. General Walker, one of the witnesses, states that the road passed partly through canebrakes and partly through the open woods; that the cane and some of the small trees and cypress knees were cut away, and the trees blazed. Other witnesses state that it was occasionally travelled by carts and wagons. It is true that other witnesses testify that the road, when they saw it, was not thirty feet wide. In that part of it which lay through the open woods, it must have been exceedingly difficult to tell whether it was or was not of the proper width; when, on the other hand, the cane had been cut down, it must have grown up again immediately afterwards, so as to leave open only the trace which travellers followed. Thompson was not required by his grant to keep the road in repair. We think that at this distance of time there is sufficient evidence to corroborate the certificate of the commandant, under whose inspection the road was to be made, that the conditions of the grant had been substantially complied with.

The defendants further allege that if the grant is otherwise valid, it has been lost by non-use, because the ferry, instead of being kept in front of the Thompson tract of land, has been kept all the time on land of the same proprietor, from a quarter to half a mile higher up the river; the defendants forget that the ferry has been all the time under the absolute control of their police regulations. If the landing has not been kept in the proper place, it is their act and their fault, and they cannot make this a cause of complaint against the plaintiff. If the ferry has, in fact, been kept in the most convenient place, they cannot now allege

against him that he went out of his way with their consent, and for the public accommodation.

This brings us to the last question in the case—what are the extent and limits of the grant? The question of its donation we dismiss from our consideration; whatever may be the power of the State to limit the donation of such grants, there is not, to our knowledge, any solemn expression of legislative will fixing the time beyond which they will cease to have effect; and, so long as the State abstains from interfering, the grant must endure.

1st. The plaintiff contends that the grant, under which he claims, originated in a contract, by which the exclusive privilege of keeping a ferry in front of his plantation was given to Thomas Thompson, as a consideration for making a road, which he did make.

2nd. That the words *con exclusion* in the grant mean that the sovereign, or his agents, shall not establish another ferry within a reasonable distance of his own.

3d. That the ferry attempted to be established at Vidalia by the defendant is on the same line of travel, and in the immediate vicinity of his grant; and that if it goes into operation, the obligation of the contract under which he holds will be impaired, and his profits greatly diminished, contrary to the true intent and meaning of the grant.

We consider it our duty in all cases to pay great deference to the decisions of the Supreme Court of the United States, and not to differ from them but for grave reasons. In cases over which that tribunal has appellate jurisdiction, as it has in this, we consider their decisions as the true exposition of the law. The questions under consideration have all, in our opinion, been determined in the Charles River Bridge *vs.* the Warren Bridge and others, 11 Peters, 420. According to the doctrine laid down in that decision, when an individual, or a corporation, allege that the State has surrendered forever its powers of public accommodation in an important line of travel, the community have a right to insist "that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear." The court further say, that in order to entitle themselves to relief, the parties must show that the legislature contracted not to do the act of which they complain. The charter, say the court, contains no such stipulation; there is no exclusive privilege given over the waters of Charles river, above or below the bridge; no engagement from the State that another shall not be erected, and no undertaking not to sanction competition and to make improvements that may diminish the amount of its increase.

The words *con exclusion*, found in the grant of the plaintiff in this case, do not make up for the want of all these stipulations. Under the rule laid down by the Supreme Court, if any other meaning can be given to a grant besides that which surrenders forever a franchise and a part of the sovereign power, that meaning must be preferred. The words con exclusion have another obvious meaning—it is that of the prohibition in the act of 1813, 1 Moreau's Dig. 475. That prohibition

does not mean that police juries may not establish ferries nearer than two leagues from each other on the same stream. Its meaning is, that, when the police jury have established a ferry and leased it, no person not licensed shall have the right to cross men and horses, for money, at the distance of a league up and down the river from the landing places of the licensed ferry. Police juries may establish as many ferries as they please.

We consider that in this case all persons living within a reasonable distance of the ferry were inhibited by the grant from interfering with it, so as to reduce its profits; but we perceive no engagement on the part of the grantor that another ferry shall not be established in the vicinity, when the increased population of the country may make it necessary. The grant contains no undertaking not to sanction competition, nor to make improvements that may diminish the income of the grantee. The Thompson tract of land, to which the ferry is attached, is from a quarter to a half mile below the town of Vidalia. Suppose that a similar grant had been made half a mile below the city of New Orleans, could it be seriously contended that no other ferry could be established within the three miles above that point, which the city of New Orleans occupies? The mere statement of the case shows that the surrender of the power, if it can at all be made, is at least not to be presumed. The difference of population between New Orleans and Vidalia does not affect the rule by which the case is to be decided.

The legislature has given to police juries full power to establish ferries, when they deem it necessary or expedient. Whether the establishment of a ferry at Vidalia by the defendants be a proper exercise of the discretion vested in them, is a question which we are not competent to decide.

For the reasons assigned it is ordered, adjudged, and decreed, that the injunction be dissolved, and that there be judgment in favor of the defendants, with costs in both courts. It is further ordered and adjudged that the right of the defendants to recover from the plaintiff such damages as they may have sustained by the suing out and continuance of the injunction be *reserved*.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the Supreme Court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, between Samuel Davis, plaintiff in error, and the Police Jury of the parish of Concordia, State of Louisiana, defendants in error, a manifest error hath happened, to the great damage of the said Samuel Davis, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under

your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of Dec'r next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said [L. S.] Supreme Court of the United States, this 27th of April, in the year of our Lord one thousand eight hundred and forty-seven.

ED. RANDOLPH,

Clerk of the United States circuit court, and district of Louisiana.

By F. N. HARALSON, *D. Clerk.*

Allowed. J. McKINLEY.

Clerk's office, supreme court of the State of Louisiana, at Alexandria.
Filed, May 11th, 1847. M. R. ARIAIL, *Cl'k.*

Bond for writ of error.

Know all men by these presents, that we, Samuel Davis, principal, and Washington Jackson, as security, are held and firmly bound unto the Police Jury of the parish of Concordia, State of Louisiana, in the full and just sum of two hundred dollars, to be paid to the said Police Jury of the parish of Concordia, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of April, in the year our of Lord one thousand eight hundred and forty-seven.

Whereas, lately, at a supreme court of the State of Louisiana, in a suit depending in said supreme court, wherein Samuel Davis was plaintiff, and said Police Jury of the parish of Concordia, State of Louisiana, defendant, judgment was rendered against the said Samuel Davis, and the said Samuel Davis having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Police Jury of the parish of Concordia, State of Louisiana, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said Samuel Davis shall prosecute his writ to effect, and answer all costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

SAM'L DAVIS,
By R. N. & A. N. OGDEN, [L. S.]
His attorneys.
WASH. JACKSON. [L. S.]

Sealed and delivered in the presence of—
A. N. OGDEN.

Approved. J. McKINLEY.
Filed, May 11th, 1847. M. R. ARIAIL, *Clerk*.

Citation in error.

The United States of America, to the Police Jury of the parish of Concordia, State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Samuel Davis is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-seventh day of April, [L. S.] in the year of our Lord one thousand eight hundred and forty-seven.

J. McKINLEY.

Marshal's return.

Received, May 1st, 1847, and on the 3d day of June, 1847, served a copy of the within citation in error on the within named Police Jury of the parish of Concordia, by handing the same to Henry B. Shaw, esq., president of said Police Jury of the parish of Concordia, at the town of Vidalia, parish of Concordia, three hundred miles from the court-house at New Orleans. Returned, June 10th, 1847.

WM. F. WAGNER,
U. States Marshal.
By J. H. RINEHART,
D'y U. States Marshal.

CLERK'S OFFICE,
Supreme court of the State of Louisiana, at Alexandria.

I, Manna Rich Ariail, clerk of said court, do hereby certify the foregoing to be a true and perfect copy of the record and all proceedings in the suit entitled "Samuel Davis vs. The Police Jury of the parish of Concordia," on file and of record in my office.

Witness my hand and the seal of said court, at the town of Alexandria, this fifteenth day of July, in the year of our Lord one [SEAL.] thousand eight hundred and forty-seven.

M. R. ARIAIL, *Clerk*.

In the absence of the chief justice from the State, I hereby certify, that Manna Rich Ariail is the clerk of the supreme court of the State of

your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of Dec'r next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said [L. S.] Supreme Court of the United States, this 27th of April, in the year of our Lord one thousand eight hundred and forty-seven.

ED. RANDOLPH,

Clerk of the United States circuit court, and district of Louisiana.

By F. N. HARALSON, *D. Clerk.*

Allowed. J. McKINLEY.

Clerk's office, supreme court of the State of Louisiana, at Alexandria. Filed, May 11th, 1847. M. R. ARIAIL, *Cl'k.*

Bond for writ of error.

Know all men by these presents, that we, Samuel Davis, principal, and Washington Jackson, as security, are held and firmly bound unto the Police Jury of the parish of Concordia, State of Louisiana, in the full and just sum of two hundred dollars, to be paid to the said Police Jury of the parish of Concordia, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of April, in the year our of Lord one thousand eight hundred and forty-seven.

Whereas, lately, at a supreme court of the State of Louisiana, in a suit depending in said supreme court, wherein Samuel Davis was plaintiff, and said Police Jury of the parish of Concordia, State of Louisiana, defendant, judgment was rendered against the said Samuel Davis, and the said Samuel Davis having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Police Jury of the parish of Concordia, State of Louisiana, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said Samuel Davis shall prosecute his writ to effect, and answer all costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

SAM'L DAVIS,

By R. N. & A. N. OGDEN, [L. S.]

His attorneys.

WASH. JACKSON. [L. S.]

Sealed and delivered in the presence of—
A. N. OGDEN.

Approved. J. McKINLEY.
Filed, May 11th, 1847. M. R. ARIAIL, *Clerk*.

Citation in error.

The United States of America, to the Police Jury of the parish of Concordia, State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Samuel Davis is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-seventh day of April, [L. S.] in the year of our Lord one thousand eight hundred and forty-seven.

J. McKINLEY.

Marshal's return.

Received, May 1st, 1847, and on the 3d day of June, 1847, served a copy of the within citation in error on the within named Police Jury of the parish of Concordia, by handing the same to Henry B. Shaw, esq., president of said Police Jury of the parish of Concordia, at the town of Vidalia, parish of Concordia, three hundred miles from the court-house at New Orleans. Returned, June 10th, 1847.

WM. F. WAGNER,
U. States Marshal.
By J. H. RINEHART,
D'y U. States Marshal.

CLERK'S OFFICE,
Supreme court of the State of Louisiana, at Alexandria.

I, Manna Rich Ariail, clerk of said court, do hereby certify the foregoing to be a true and perfect copy of the record and all proceedings in the suit entitled "Samuel Davis vs. The Police Jury of the parish of Concordia," on file and of record in my office.

Witness my hand and the seal of said court, at the town of Alexandria, this fifteenth day of July, in the year of our Lord one [SEAL.] thousand eight hundred and forty-seven.

M. R. ARIAIL, *Clerk*.

In the absence of the chief justice from the State, I hereby certify, that Manna Rich Ariail is the clerk of the supreme court of the State of

Louisiana, at Alexandria, and that the foregoing attestation made by him is in due form of law.

P. A. ROST, *Senior judge.*

New Orleans, 21 July, 1847.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, between Samuel Davis, plaintiff in error, and The Police Jury of the parish of Concordia, State of Louisiana, defendants in error, a manifest error hath happened, to the great damage of the said Samuel Davis, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 27th of April, in the [L. S.] year of our Lord one thousand eight hundred and forty-seven.

EDWARD RANDOLPH,
Clerk of the U. S. circuit court and dist. of Louisiana.
By F. N. HARALSON, *D. cl'k.*

Allowed. J. McKINLEY.

Filed May 11th, 1847.

Citation in error.

The United States of America, to the Police Jury of the parish of Concordia, State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, wherein Samuel Davis is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the

said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-seventh day of
[L. S.] April, in the year of our Lord one thousand eight hundred and forty-seven.

J. McKINLEY.

Received May 1st, 1847, and on the 3d day of June, 1847, served a copy of the within citation in error on the within named Police Jury of the parish of Concordia, by handing the same to Henry B. Shaw, esq., president of said Police Jury of the parish of Concordia, at the town of Vidalia, parish of Concordia, three hundred miles from the court house at New Orleans.

Returned June 10th, 1847.

WM. F. WAGNER,
U. S. Marshal.
By J. H. RINEHART,
Dy. U. States Marshal.

Filed 14th October, 1847.